

1174

No. 3183

United States
Circuit Court of Appeals
For the Ninth Circuit. 1174

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation,

Appellant,

vs.

BELLINGHAM NATIONAL BANK, THE CITY
OF BELLINGHAM, MORSE HARDWARE
COMPANY, WHIDBY ISLAND SAND &
GRAVEL COMPANY, E. K. WOOD LUM-
BER COMPANY, MORRISON MILL COM-
PANY, K. SAUSET, CAINE GRIMSHAW
COMPANY, JOHN BIEKERT, NORMAN
TRANSFER COMPANY, FRANK MIDDLE-
STADT, JOHN KASTNER, SAM SEIVER,
BELLINGHAM CONCRETE WORKS, W. M.
SEEGER, THOMAS M. LYNN and M. J.
WILLIAMS, co-partners as Lynn & Williams,

Appellees.

Transcript of Record

Upon Appeal From the United States District Court for the
Western District of Washington, Northern Division.

FILED

JUL 19 1918

F. O. MONCKTON,
CLERK

No. _____

United States
Circuit Court of Appeals

For the Ninth Circuit.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation,

Appellant,


vs.

BELLINGHAM NATIONAL BANK, THE CITY
OF BELLINGHAM, MORSE HARDWARE
COMPANY, WHIDBY ISLAND SAND &
GRAVEL COMPANY, E. K. WOOD LUM-
BER COMPANY, MORRISON MILL COM-
PANY, K. SAUSET, CAINE GRIMSHAW
COMPANY, JOHN BIEKERT, NORMAN
TRANSFER COMPANY, FRANK MIDDLE-
STADT, JOHN KASTNER, SAM SEIVER,
BELLINGHAM CONCRETE WORKS, W. M.
SEEGER, THOMAS M. LYNN and M. J.
WILLIAMS, co-partners as Lynn & Williams,

Appellees.

Transcript of Record

Upon Appeal From the United States District Court for the
Western District of Washington, Northern Division.



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov

INDEX.

	Page
Affidavit of Service by Publication.....	37
Amended Bill of Complaint.....	94
Answer of Caine-Grimshaw Company.....	88
Answer of City of Bellingham	68
Answer of E. K. Wood Lumber Company.....	64
Answer of Morse Hardware Company.....	59
Answer of Morrison Mill Company.....	78
Answer of K. Sauset.....	82
Answer of The Bellingham National Bank.....	43
Assignment of Errors.....	133
Bill of Complaint.....	2
Bond on Appeal.....	141
Certificate of Clerk U. S. District Court to Transcript of Record.....	156
Citation	158
Exceptions to Judgment and Decree.....	129
Exceptions of Plaintiff to Findings of Fact and Conclusions of Law of Defendant, The Bell- ingham National Bank	119
Exhibit "A"—Excerpt Containing Pages 1 and 15 to 19, inclusive	16
Findings of Fact and Conclusions of Law.....	107
Judgment and Decree	125
Names and Addresses of Counsel.....	1
Opinion of the Court.....	147
Order Allowing Appeal and Fixing Supersedeas Bond	139

Index.

Order Allowing Exceptions.....	122
Order Allowing Petition for Appeal.....	139
Order of Default of Moran Brothers.....	41
Order Directing Service by Publication.....	35
Petition for Appeal.....	137
Praecipe for Transcript.....	153
Proposed Conclusions of Law and Order Deny- ing Same	123
Stipulation as to Record Necessary to be Printed	145

*United States District Court, Western District of
Washington, Northern Division.*

No. 9-E

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*
vs.

AL MORAN and W. T. MORAN, co-partners doing
business as Moran Brothers; THE CITY OF
BELLINGHAM, a municipal corporation or-
ganized and existing under and by virtue of
the laws of the State of Washington; THE
BELLINGHAM NATIONAL BANK, a cor-
poration organized under the laws of the
United States of America; MORSE HARD-
WARE COMPANY, a corporation; WHIDBY
ISLAND SAND & GRAVEL COMPANY, a
corporation; E. K. WOOD LUMBER COM-
PANY, a corporation; MORRISON MILL
COMPANY, a corporation; K. SAUSET;
CAINE GRIMSHAW COMPANY, a corpora-
tion, *Defendants.*

NAMES AND ADDRESSES OF COUNSEL.

MESSRS. HASTINGS & STEDMAN,

Attorneys for Appellant, American Surety
Company of New York, a corporation, Seattle,
Washington.

MESSRS. KELLOGG & THOMPSON,

Attorneys for Appellant, American Surety
Company of New York, a corporation, Seattle,
Washington.

MESSRS. SATHER & LIVESEY,

Attorneys for Appellees, The Bellingham National Bank and Whidby Island Sand & Gravel Company, Bellingham, Washington.

D. W. FEATHERKILE, Esq.,

Attorney for Appellee, The City of Bellingham, Washington.

MESSRS. HADLEY & ABBOTT,

Attorneys for Appellees, E. K. Wood Lumber Co., Morrison Mill Co. and Morse Hardware Co., Bellingham, Washington.

MESSRS. KELLOGG & THOMPSON,

Attorneys for Appellees, Caine-Grimshaw Company, a corp., and K. Sauset, Bellingham, Washington.

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation,

Plaintiff,

vs.

AL MORAN and W. T. MORAN, co-partners doing
business as Moran Brothers; THE CITY OF
BELLINGHAM, a municipal corporation or-
ganized and existing under and by virtue of
the laws of the State of Washington; THE
BELLINGHAM NATIONAL BANK, a corpo-
ration organized under the laws of the United
States of America; MORSE HARDWARE

COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE GRIMSHAW COMPANY, a corporation,
Defendants.

Bill of Complaint.

To the Honorable Jeremiah Neterer, Judge of the above entitled court:

Comes now your petitioner, American Surety Company of New York, a corporation, and, for bill of complaint, states and alleges as follows, to-wit:

1.

That at all times herein mentioned said plaintiff, American Surety Company of New York, was, and still is, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and was and is a resident and citizen of the State of New York, and is duly authorized to transact business in the State of Washington, and has paid its annual license fees last due to the State of Washington.

2.

That at all times herein mentioned, the above named defendants, Al Moran and W. T. Moran, were, and still are, co-partners doing business under the firm name and style of Moran Bros., and were both residents and citizens of the State of Washington and of the Western District thereof,

4 *American Surety Company of New York vs.*

residing at the City of Bellingham, in Whatcom County, Washington.

3.

That at all times herein mentioned, the defendant, City of Bellingham, was, and still is, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington.

4.

That at all times herein mentioned, the defendant, Bellingham National Bank, was, and still is, a corporation organized and existing under the national banking act of the United States of America, and was a citizen and resident of the State of Washington, and of the Western District thereof, having its place of business, residence and citizenship in the City of Bellingham, Whatcom County, Washington.

5.

That at all times herein mentioned, Morse Hardware Company, was, and still is, a corporation organized and existing under and by virtue of the laws of the State of Washington, and was, and still is, a resident and citizen of the State of Washington, having its place of business, residence and citizenship in the City of Bellingham, Whatcom County, Washington.

6.

That at all times herein mentioned, defendant, Whidby Island Sand & Gravel Company, was, and still is, a corporation organized and existing under and by virtue of the laws of the State of Wash-

ington, and was, and still is, a resident and citizen of the State of Washington, having its place of business, residence and citizenship in the City of Bellingham, Whatcom County, Washington.

7.

That at all times herein mentioned, defendant, E. K. Wood Lumber Company, was, and still is, a corporation organized and existing under and by virtue of the laws of the State of Washington, and was, and still is, a resident and citizen of the State of Washington, having its place of business, residence and citizenship in the City of Bellingham, Whatcom County, Washington.

8.

That at all times herein mentioned, defendant, Morrison Mill Company, was, and still is, a corporation organized and existing under and by virtue of the laws of the State of Washington, and was, and still is, a resident and citizen of the State of Washington, having its place of business, residence and citizenship in the City of Bellingham, Whatcom County, Washington.

9.

That at all times herein mentioned defendant, K. Sauset, was, and still is, a resident and citizen of the State of Washington, having his residence in the City of Bellingham, Whatcom County, Washington.

10.

That at all times herein mentioned defendant, Caine Grimshaw Company, was, and still is, a cor-

6 *American Surety Company of New York vs.*

poration organized and existing under and by virtue of the laws of the State of Washington, and was, and still is, a resident and citizen of the State of Washington, having its place of business, residence and citizenship in the City of Bellingham, Whatcom County, Washington.

11.

That for a first cause of action against defendants, and all of them, plaintiff alleges as follows, to-wit: That on or about the 29th day of July, 1916, said defendants, Al Moran and W. T. Moran, co-partners as Moran Bros., entered into a contract with the City of Bellingham for the improvement of Maryland Street from Ellis Street to James Street in the City of Bellingham at the agreed contract price of \$5,087.80,—said improvement to consist of clearing and paving the asphalt pavement as more particularly appears by a contract entered into under Ordinance of the City of Bellingham No. 2773, creating Local Improvement District No. 519. (A copy of which contract is hereto attached, marked Exhibit A and made a part hereof.)

12.

That to secure the performance of said contract entered into under the terms and conditions thereof, and to secure the payment due to all laborers, mechanics, sub-contractors, materialmen and persons who should supply such person or persons, or sub-contractors with materials, supplies and provisions for carrying on such work, said Moran

Bros. and the plaintiff herein, American Surety Company of New York, executed a bond unto the State of Washington in the form provided by law in the penal sum of \$5,087.80, which said bond was duly executed on the 27th day of July, 1916, and filed with the City of Bellingham, and that said contract and said bond were accepted by the City of Bellingham.

13.

That said contract has been fully completed and accepted by the City of Bellingham, but no payment has been made thereon either to said contractor or to the materialmen hereinafter named who have filed claims against said bond.

14.

That plaintiff is advised and so alleges the fact to be that the following claims have been presented against said bond, to-wit:

Morrison Mill Company for the sum of....	\$65.56
Caine Grimshaw Company for the sum of	\$1,268.19
Morse Hardware Company for the sum of	\$133.25
K. Sauset for the sum of.....	\$2,125.36

15.

That plaintiff is informed, and verily believes, that said Al Moran and W. T. Moran, co-partners as Moran Bros., have assigned to the Bellingham National Bank all sums coming to them under said contract for certain advances made by the said Bellingham National Bank to said Moran Bros. and plaintiff avers that said assignment was given

to said Bellingham National Bank as security for money to be advanced, the exact amount of said claim of said Bellingham National Bank, by reason of said assignment, plaintiff does not know, but is informed that said claim of the Bellingham National Bank against Moran Bros. amounts to \$5,-419.17, but whether all of said claim is by reason of advances upon said Maryland Street contract, plaintiff does not know.

16.

Plaintiff further avers that it is liable to the payment of all of said claims excepting the claim of the Bellingham National Bank under its said bond.

17.

Plaintiff further avers that defendant, City of Bellingham, is about to pay over to said Moran Bros., or to their assignee, Bellingham National Bank, the full amount of the contract price of said bond, without requiring the application of any of said sums due said Moran Bros. to the payment of said claims filed against said Moran Bros. on said bond.

18.

Plaintiff further avers that said Al Moran and W. T. Moran, co-partners as Moran Bros., are insolvent, and are unable to respond to any claim of the plaintiff that it may have by reason of the payment of said claims so filed against said bond, and that if said sums due to said Moran Bros. are paid to said Moran Bros., or said Bellingham Na-

tional Bank, their assignee, this plaintiff will have no protection on its liability on said claims to pay said claims or source from which it can seek reimbursement for payment thereof.

19.

Plaintiff further avers that in law and equity the sums unpaid to Moran Bros. on said contract ought of right to be applied in payment of materialmen, laborers and sub-contractors employed in prosecuting said work, and those furnishing materials and supplies to such persons, to the end that all claims should be paid that are justly chargeable to said work out of the contract price agreed to be paid therefor, to the extent that such sums so unpaid by the City of Bellingham on said contract, undistributed, are adequate therefor.

20.

Plaintiff further avers that in law and in equity it has a lien by virtue of becoming the surety of the said Moran Bros. on their said contract with the City of Bellingham, upon all sums due them under said contract, to reimburse it for all sums it may be forced to pay on account of said claims so filed.

21.

Plaintiff further avers that it is not advised as to the validity of the claims of the other defendants than Moran Bros. as filed and asserted against said Moran Bros. and said bond, and that said defendants should be brought into this court to present their claims and offer proof in support thereof,

and said City of Bellingham should be restrained from paying said money due on said contract, or any portion thereof, to said Moran Bros. or to said Bellingham National Bank, but should be permitted to pay said money into the registry of this court to be distributed in the payment, so far as the same is adequate therefor, of the laborers, materialmen, contractors, and sub-contractors who have performed labor or furnished materials upon said contract.

22.

Plaintiff further avers that this is a controversy between citizens and residents of different states, to-wit: between the American Surety Company of New York, a citizen and resident of the State of New York, and said defendants, all of whom are citizens and residents of the State of Washington, and that this action involves more than \$3,000, exclusive of interest and costs.

FOR A SECOND CAUSE OF ACTION, This plaintiff avers:

1.

That on or about the 22nd day of September, 1916, the City of Bellingham entered into a contract with defendants, Al Moran and W. T. Moran, co-partners as Moran Bros., for the improvement of Iowa Street from James Street to Woburn Street, in the City of Bellingham, by clearing and grubbing, laying concrete walks and sewers, for the agreed compensation of \$3,135, and that plaintiff, American Security Company of New York,—in

order to secure the performance of said contract, and the payment of all laborers, mechanics, sub-contractors and materialmen, and all persons who shall supply such person or persons or sub-contractors with materials, supplies and provisions for the carrying on of such work,—as surety for said Al Moran and W. T. Moran, executed a bond running to the State of Washington, on or about September 20, 1916, in the penal sum of \$3,135, and said bond and contract were accepted by the City of Bellingham, and said bond is kept and held by the City of Bellingham as security for the performance of said contract, and is in full force, effect and virtue, and this plaintiff recognizes and always has recognized its liability thereunder, according to its true intent, tenor and meaning. (A copy of which said contract is hereto attached, marked Exhibit B and made a part hereof.)

2.

That said defendants, Moran Bros., have substantially completed said contract for the improvement of Iowa Street, and same has been accepted by the City of Bellingham, but that no payments have been made to said Moran Bros. or to those furnishing material and labor on said contract, and the full amount of the contract price, to-wit: \$3,135, remains in the hands of the City of Bellingham to be applied toward the payment of work done under said contract.

3.

That plaintiff is informed and verily be-

believes that said defendants, Moran Bros., purported to sell, assign, transfer and set over unto the defendant, Bellingham National Bank, the warrants, vouchers or bonds to be issued in payment of the contract of said defendants, Moran Bros., to the City of Bellingham for advances theretofore or thereafter to be made by said Bellingham National Bank, and said assignment was given as security for money so advanced or to be advanced.

4.

Plaintiff further avers that the aggregate amount of all of the claims against said Moran Bros. for said work, exceeds the amount of said contract price, and that the following claims are asserted against said contract price, to-wit:

Bellingham National Bank\$5,419.17

(though what portion thereof is against money advanced for the Iowa Street contract, plaintiff does not know).

Morse Hardware Company\$1,023.43

Whidby Island Sand & Gravel Co..... \$630.00

E. K. Wood Lumber Company..... \$174.46

Morrison Mill Company \$75.16

K. Souset\$2,000.00

and there is due and unpaid a pay-roll of \$191.90 to laborers.

5.

Plaintiff further avers that it is liable to the payment of all of these claims that have been filed with the City of Bellingham against said bond within thirty days after the acceptance thereof,

and that said claims exceed the amount due upon said contract.

6.

Plaintiff further avers that it is informed and verily believes that said defendants, Moran Bros., have no means or property out of which judgment could be satisfied or out of which they can or could indemnify this plaintiff for any sum it may be called upon to advance in the payment of said claims, and that if the sums due under said contract are paid to said Moran Bros., or to said Bellingham National Bank, this plaintiff will have no protection for its liability on said bond to pay said claims or source from which it can seek reimbursement for payment thereof.

7.

Plaintiff further avers that in law and in equity the sums unpaid to defendants, Moran Bros., on said contract, ought of right to be applied to the payment of materialmen, laborers and sub-contractors employed in prosecuting said work to the end that all claims should be paid that are justly chargeable to said work out of the contract price agreed to be paid therefor, to the extent that such sums undistributed of said contract price are adequate therefor, and plaintiff avers that its lien in and to the sums due and payable on said contract still unpaid is superior to any lien of the Bellingham National Bank in or to the same for moneys advanced by it, and that in law and equity said Bellingham National Bank is not entitled to re-

ceive from the City of Bellingham the moneys due to said Moran Bros. on said contract under any assignment made by said Moran Bros. to it, but that said balance due upon said contract should be paid into court to be distributed by this Honorable Court as in law and equity it may be determined to be meet and proper.

8.

Plaintiff further avers that this controversy in this second cause of action is between citizens and residents of different states, to-wit: between the American Surety Company of New York, a citizen and resident of the State of New York, and all of said defendants, who are citizens and residents of the State of Washington, and involves more than \$3,000, exclusive of interest and costs.

9.

Plaintiff incorporates in its second cause of action herein each and every allegation set forth and contained in its first cause of action touching the residence and citizenship and corporate capacity of the plaintiff and defendants herein, and makes the same a part of this its second cause of action.

WHEREFORE, plaintiff prays that pending this action, this Honorable Court may be pleased to restrain the defendants, Bellingham National Bank, Al Moran and W. T. Moran, co-partners as Moran Bros., and the City of Bellingham, from disbursing said sums so held by the City of Bellingham otherwise than in the payment of the claims

filed, provable and established against said bond, and that said defendants, and each of them, be required to appear at the time and place designated by this court, then and there to show cause, if any they have, why such injunction should not issue pendente lite, and that upon the final hearing hereof, this Honorable Court may be pleased to grant such an injunction enjoining and restraining said defendants from disbursing said moneys receivable under said assignment in payment of the claim of the Bellingham National Bank or to Moran Bros., until all of the claims justly provable against said contract and the bond furnished by this plaintiff have been duly paid and discharged, and that all of said defendants be required to file and prove their claims in this court, and to set forth whether they have filed their claims against said bond within the time required by law, and that they justly prove the validity of the claims so filed, and that said City of Bellingham be ordered and decreed to pay all sums due to said Moran Bros. into the registry of the court to be distributed by this Honorable Court to those who are entitled to receive payment on said contracts, and that plaintiff shall have such other and further relief as to this Honorable Court may seem meet and equitable in the premises.

KELLOGG & THOMPSON,
HASTINGS & STEDMAN,

*Attorneys and Solicitors for the Plaintiff,
American Surety Co. of New York.*

State of Washington, County of King, ss:

S. H. Melrose, being first duly sworn, on his oath deposes and says: That he is the resident assistant secretary of the American Surety Company of New York, plaintiff above named; that he makes this verification for and on behalf of said plaintiff; that he has read the foregoing complaint, knows the contents thereof, and believes the same to be true.

S. H. MELROSE,

Subscribed and sworn to before me this May 19th, A. D. 1917.

(Seal)

ROSE E. MOHR,

Notary Public in and for the State of Washington, residing at Seattle.

(Indorsed: Bill of Complaint. Filed in U. S. District Court, Western District of Washington, Northern Division, May 21, 1917. Frank L. Crosby, Clerk, by Ed. M. Lakin, Deputy.)

EXHIBIT A.

(Exhibit B Same in Form.)

CITY OF BELLINGHAM—DEPARTMENT OF
PUBLIC WORKS.

PROPOSAL AND CONTRACT

For the Improvement of Maryland St., from Ellis St. to James St., under Ordinance No. 2773, creating Local Improvement District No. 519.

NOTICE.

Bidders are hereby notified that no bids can be withdrawn, for any cause whatsoever, after 10:30

o'clock A. M. of date of opening of bids by the Board of Public Works. A certified check for not less than five (5) per cent of the total amount bid and payable to the order of the City Comptroller, must be filed with the City Comptroller. Any bidder who fails to enter into a contract within ten (10) days after it is awarded to him, will be declared irresponsible, and his check will be forfeited as provided by the City Charter.

Do not bid before you fully understand the manner of payment proposed for the improvement.

PROPOSAL.

Bellingham, Washington, July 24, 1916.

To the City Council of the City of Bellingham:

The undersigned hereby certifies that we personally examined the plans, specifications and contract for the work to be done on Maryland St., and hereby agree to furnish all necessary material and labor required to complete said work in accordance with said plans and specifications and upon the terms and conditions provided in said specifications and form of contract, at the following prices, to-wit:

Bid	Written Price
Clearing and Grub	Twenty Dollars \$20.00 lump sum
Earth	Forty cts. .40 per cu. yd.
Lumber	Twenty Dollars 20.00 per M b m
Old Lumber	Five Dollars 5.00 per M b m
Concrete stops	Thirty cts. .30 per lin. ft.
Con. box drain	Seventy cts. .70 per lin. ft.
Monument covers	One Dollar 1.00 per cover

Con. paving,		
1 course		per sq. yd.
Con. paving,		
2 course		per sq. yd.
Asphalt paving	One and 35-100	1.35 per sq. yd.
Asphalt Maintenance		.01 per sq. yd.

\$5087.80

Date of completion: Nov. 1st, 1916,

Amt. \$5087.80.

MORAN BROS.,
By Al Moran, Bidder.

PLANS AND SUPERINTENDENCE.

Whenever in these specifications the words Engineer or City Engineer occur, they shall be understood to refer to the City Engineer himself or his duly appointed deputy or assistant acting within the authority conferred on him by the City Engineer. Wherever the word City occurs it shall be understood to mean the City of Bellingham. But no agent of the City shall have power to make, alter, enlarge, or relax the stipulations or requirements of these specifications, without the formal authorization so to do, conferred by ordinance, resolution or other usual special action of the City except in so far as such authority may be specifically conferred, in or by the specifications themselves.

General and detail plans where necessary will be furnished for this improvement by the City Engineer showing the character and dimensions of the

structures to be built and such plans are hereby made a part of these specifications and will be enforced. During the progress of the work the City Engineer may furnish additional plans and make such alterations of the original plans as he deems necessary and the contractor shall upon receiving such additional plans or alterations cause the work to be executed in conformity with such additional plans and alterations to the satisfaction of the City Engineer.

Inspection:—The Engineer may provide for the inspection, by assistants and inspectors, of all materials used and all work done under this contract. Such inspection may extend to all parts of the work and the Engineer and his inspectors shall have free access to all places where any material used for this improvement is prepared. The contractor shall at his own expense furnish such labor as is necessary for the handling of material for proper inspection and such samples as the City Engineer may require. Inspectors shall have authority to reject defective material and to suspend any work that is being improperly done, subject to the final decision of the Engineer. Inspectors shall have no authority to permit deviations from, or to relax any of the provisions of these specifications without the permission or instruction of the Engineer; nor to delay the contractor by failure to inspect materials and work with reasonable promptness.

GENERAL STIPULATIONS.

The contractor is required to furnish all necessary labor and materials and fully to complete the said work in accordance with the plans and specifications, and to the satisfaction of the City Engineer, for the price bid. Bidders must examine and judge for themselves as to the location of the proposed work, the nature of the excavation to be made, and the work to be done. It is understood that the whole of the work to be performed under the contract for this improvement is to be done at the contractor's risk, and he is to assume the responsibility and risk of all damages to the work or to property on the line of said work which may be occasioned by floods, backwater, caving of the street, settling of the foundations of buildings, or from any cause whatever. The contractor shall not assign or transfer the contract for this improvement or sub-let any of the work embraced in it without the written consent of the Board of Public Works.

Order of Work:—The contractor shall commence the work at such points as the City Engineer may direct, and shall conform to his directions as to the order of time in which the different parts of the work shall be done.

Instructions:—Whenever the contractor is not present on the work, orders will be given to the superintendent or overseer who may have immediate charge thereof, and shall by them be received and strictly obeyed. And if any person employed

on the work shall refuse or neglect to obey the directions of the City Engineer or Board of Public Works in anything relating to the work, or shall appear to be incompetent, intemperate, disorderly or unfaithful, he shall, upon the requisition of the Engineer, be at once discharged, and not again employed without his consent.

Signals and Lights:—The contractor will be required to observe all City Ordinances in relation to obstructing streets, keeping open passage ways and protecting the same where exposed, maintaining signals and lights, and generally to obey all laws and ordinances controlling or limiting those engaged on the works, and the said contractor expressly stipulates and agrees to erect and maintain good and sufficient guards, barricades, signals and lights at all unsafe places at or near where the said work and improvement contemplated herein is to be done or made, and to indemnify and save harmless the City of Bellingham from all suits and actions, of every name and description, brought against the said City for or on account of any injuries or damages received or sustained by any party or parties, by reason of the failure of said contractor to erect or maintain such guards, barricades or signals, or by or in consequence of any negligence of said contractor or his or their agents or employees, in carrying on said work, or by or on account of any act or omission of said contractor in the performance of said work; and it is agreed by the contractor that so much of the money as

shall be due to him or them under and by virtue of the contract for this improvement as shall be considered necessary by the Board of Public Works, may be retained by the City of Bellingham until all suits or claims for damages as aforesaid shall have been settled, and evidence to that effect furnished to the satisfaction of said Board.

Sanitary Conveniences:—The contractor shall provide all necessary privy accommodations for the use of his employees on the street, and shall maintain the same in a clean and sanitary condition. He shall not create nor permit any nuisance to the public or to residents in the vicinity of the work.

Public Convenience:—No material, or other obstruction shall be placed within five feet of fire hydrants, which must be at all times readily accessible to the Fire Department.

During the progress of the work the convenience of the public and of the residents along the street must be provided for as far as practicable. Convenient access to driveways, houses and buildings along the street must be maintained wherever possible. Temporary approaches to and crossings of intersecting streets and sidewalks must be provided and kept in good condition wherever practicable.

Storage of New Material:—The material for construction when brought upon the street shall be neatly piled so as to cause as little obstruction to travel as possible, and so that it may be conveniently inspected.

Quality of Material and Work:—The judgment and decision of the Engineer as to whether the materials supplied and the work done under this contract comply with the requirements of these specifications shall be conclusive and final. No material shall be used in the work until it has been examined and approved by the Engineer or his authorized agents. All rejected material must be promptly removed from the work and replaced with material acceptable to the Engineer and all improper or defective work must be corrected, and, if necessary, removed and reconstructed so as to comply with these specifications and the instructions of the City Engineer.

Measurements and Estimates:—Final estimates shall be based upon the actual quantities of completed and accepted work, customary or convenient methods of measurements and computation to the contrary notwithstanding.

Disputes:—To prevent all disputes and litigation, it is further agreed by the contractor that the City Engineer shall in all cases determine the amount of work to be paid for under the contract for this improvement, and his estimates and decisions shall be final and conclusive, subject to the approval of the Board of Public Works.

Change of Plan:—The City Engineer shall have the right to make changes in the location, form, dimensions, grades and alignments, and to make any variations in the quantity of the work to be done, as exhibited in the schedule of prices or bid for said work, and to entirely exclude any

of the items of work relating to said quantities at any time, either before the commencement of work, or during the progress, without thereby altering or invalidating any of the prices therein named. Should such action diminish the amount of work that would otherwise be done, no claim for damages shall be made on the ground of loss of anticipated profits on work so dispensed with; and should such action be taken after the commencement of any particular piece of work, and result thereby in extra cost to the contractor, the City Engineer shall estimate the amount to be allowed therefor, which he shall consider fair and equitable, and his decision shall be final and conclusive.

Tearing Up Street:—The contractor shall not be allowed to dig up or occupy with material any more of the street than there is absolute necessity for in the prosecution of the work, and of such necessity the City Engineer shall be the sole judge. The contractor shall give forty-eight hours' notice, when he will require the services of the Engineer for laying out any portion of the work. He shall furnish and keep on the work at all times a spirit-level and straightedge, of such form and size as directed by the Engineer. He shall furnish all lumber for stakes, under the direction of the Engineer, and shall carefully preserve all stakes when set; and in case any of them have to be replaced by the Engineer, the contractor shall be charged with the expense thereof, and the same be deducted from his estimates.

Monuments and Stakes:—The contractor shall not disturb any monuments or stakes found on the line of improvement until ordered by the Engineer. A penalty of twenty-five dollars will be imposed for each monument disturbed without orders, and the amount deducted from the estimates.

Water and Sewer Pipes, Conduits:—The contractor shall support, by timbers or otherwise, all water, sewer and gas pipes and conduits which may be affected in any way by the work, and do everything necessary to support and sustain said water, sewer and gas pipes and conduits laid along or across said street. In case any of said water, sewer and gas pipes, and conduits shall be damaged, they shall be repaired by the authorities having control of the same, and the expense of such repairs shall be deducted from the amount due the contractor on his final estimate.

Time of Completion:—The work embraced in the contract for this improvement shall be begun immediately after the contract is duly executed and the bond filed as herein provided, and carried on regularly and uninterruptedly thereafter (unless the said Board shall otherwise, in writing, specially direct), with such force as to secure its completion prior to Nov. 1st, 1916 days after said contract has been executed, the time of beginning, rate of progress and time of completion being essential conditions of said contract. And if the contractor shall fail to complete the work by the time above specified, the sum of \$7.50 per day, for each and

every day thereafter until such completion, shall be deducted as liquidated damages from the moneys payable under said contract, together with such amounts of money as shall have been proven to be the damages resulting to abutting property owners, arising from the contractor's failure so to complete such work.

It is further specifically agreed that if at any time the City Engineer is of the opinion that the work is unnecessarily delayed, and will not be finished within the prescribed time, he shall notify the contractor in writing to that effect, and if the said contractor shall not, within five days thereafter, take such measures as will, in the judgment of said Engineer, insure the satisfactory completion of the work, the Board of Public Works may then notify the said contractor to discontinue all work under the contract for this improvement; and it is hereby agreed that the said contractor shall immediately respect such notice and stop work and cease to have any rights to the possession of the grounds. The Board of Public Works may thereupon employ such force as they may deem advisable to complete the work, and charge the expense of all labor and materials necessary for such completion to said contractor; and the expense so charged shall be deducted and paid by the City of Bellingham out of such moneys as may be then due, or may afterwards become due, to said contractor under and by virtue of the contract for this improvement, and in case such expense is less than the sum which

would have been payable under such contract if the same had been fulfilled by the said contractor, then said contractor shall be entitled to receive the difference; and in case such expense is greater, the said contractor shall pay to the City the amount of such excess so due. And if the said contractor shall assign the contract for this improvement or abandon the work thereon, or shall neglect or refuse to comply with the instructions of the City Engineer relative thereto, or shall in any manner fail to comply with any of the specifications or stipulations herein contained, or with the requirements of the Charter or Ordinances of the City of Bellingham, the Board of Public Works shall have the right to annul and cancel said contract, and to relet the work, or any part thereof, and such annulment shall not entitle the said contractor to any claim for damage on account thereof, nor shall it affect the right of the City to recover damages which may arise from such failure.

In case any extra work is required for which a price has not been included in the contract for this improvement, the same shall not be begun until a price therefor shall have been agreed upon by the contractor and the City Engineer. If, for any reason, the said extra work cannot be performed at an agreed price, it shall be paid for at the actual cost of labor and material required, together with ten per cent. additional.

The said contractor agrees to pay the wages of all persons and for assistance of every kind em-

ployed upon or about said work, and for all materials purchased therefor, and the City of Bellingham may withhold any and all payments under this contract until satisfied that such wages, assistance and materials have been fully paid for.

The contract for this improvement shall take effect immediately after it has been duly executed and the bond filed, and shall be assigned only with the written consent of the Board of Public Works endorsed thereon, and no assignment that shall be made shall release the contractor therefrom, or his or their sureties, from any liabilities arising under this contract.

And it is further agreed that said work shall be performed in workdays of not more than eight hours each, except in cases of extraordinary emergency; and that this contract may be cancelled by the Board of Public Works in case such work is not performed in accordance with the terms of this provision and no case of extraordinary emergency shall be construed to exist in any case where other labor can be found to take the place of labor which has already been employed for eight hours in any calendar day.

All water used by the contractor during the progress of the work on this improvement for any purpose whatever shall be charged against said contractor in conformity with the rules and regulations of the City Water Department and must be paid by him. The cost of such water shall be included in the various prices bid for the various

items of this improvement. Before the final estimate of this contract is accepted the contractor shall furnish the Engineer a receipt signed by the City Water Superintendent in full for the payment for all city water used on this improvement.

Blasting:—All blasting shall be carried on in accordance with the Ordinances of the City of Bellingham relative thereto, which ordinances are made a part hereof. Care shall be used to protect all persons and property in the vicinity. Where persons or property are liable to injury from flying rocks or pieces of stump the substance blasted shall be covered with timbers or brush securely chained together. The City Engineer shall be sole judge of the manner of blasting and the protection used for persons and property in the vicinity.

Patents:—All fees for any patent invention, article agreement, or other apparatus that may be used upon or in any way connected with the construction, erection, or maintenance of the work, or any part thereof, embraced in the contract or these specifications, shall be included in the price stipulated in the contract for said work, and the contractor or contractors must protect and hold harmless the City against any and all demands for such fees or claims.

Eight Hour Day:—It is hereby further agreed that this contract is made and is to be carried out subject to and in pursuance of Sec. 6572 to 6577, both inclusive of Remington & Ballinger's Annotated Code of the State of Washington, requiring said work to be done in work days of not more

than eight hours each, excepting in cases of extraordinary emergency and that this contract may be cancelled by the Board of Public Works in case such work is not performed in accordance with the terms of this provision and no case of extraordinary emergency shall be construed to exist in any case where other labor can be found to take the place of labor which has already been employed for eight hours in any calendar day. Provided, that when the hours of labor are extended in case of extraordinary emergency, the rate of pay for time employed in excess of eight hours of each calendar day, shall be one and one-half ($1\frac{1}{2}$) times the rate of pay allowed for the same amount of time during eight hours' service.

Minimum Wage:—It is further understood and agreed that this contract was made and is to be carried out subject to and in pursuance of Sec. No. 188 $\frac{1}{2}$ of the City Charter of the City of Bellingham, and Ordinance No. 1785 of the City of Bellingham, and said contractor agrees to pay the persons and all of the persons employed by him on this work a rate of wages which is not less than the minimum rate as specified in said Ord. 1785 for this class of work, and that in case he should pay any person employed by him upon this work either directly or indirectly a rate of wages less than the minimum fixed by Ord. 1785, such failure or violation of this section shall immediately work a forfeiture of this contract and all rights which said contractor shall have hereunder.

CONTRACT FOR LOCAL IMPROVEMENT.

This Contract, made in duplicate this 29th day of July, A. D. 1916, by and between the City of Bellingham, a Municipal Corporation of the State of Washington, party of the first part and.....

Witnesseth, That the said party of the second part agree...to improve Maryland St., Ellis St. to James, in the said City of Bellingham, as ordered by Ordinance No. 2773 approved June 30, 1916, in all respects in accordance with the plans, specifications and general stipulations prepared by the City Engineer and now on file in the office of the City Comptroller of said City, a copy of which plans, specifications and general stipulations are hereto attached and expressly made a part of this contract. Said part... of the second part agree.... to provide all necessary machinery, tools, apparatus and other means of construction and do all work and furnish all the material called for by said plans, specifications and stipulations in the manner therein prescribed and according to the requirements of said City Engineer, and subject to the superintendence of the Board of Public Works and acceptance by the party of the first part, for the following sums, to-wit: as per list on front page.

- Clearing and Grubbing....dollars (\$.....)
- Earth including sub-gradingdollars
(\$.....) per cubic yard.
- Rock including sub-grading.....dollars
(\$.....) per cubic yard.

Wood Walks, Curbs, Gutters, etc.....	dollars
(\$.....) per M., B. M.	
Concrete Walks	cents (\$0.....) per sq. ft.
Concrete Alley Crossing.....	cents (\$0.....)
per square ft.	
Tile Drain.....	cents (\$0.....) per linear foot
Planking and Bridging.....	dollars (\$.....)
per M., B. M.	
Piling .....	.....
Posts .....	.....
Concrete Curbs and Gutters .....	.....
Concrete Curbs and Gutters—armored.....	.....
Sewers.....	inch
Sewers.....	inch
Sewers.....	inch
Concrete Culvert	inch.....
Iron—re-inforcing .....	.....
Brick Paving .....	.....
Asphalt Paving .....	.....
Concrete Paving—one course .....	.....
Concrete Paving—two course .....	.....
Warrenite Paving .....	.....

As soon as possible after the acceptance of the work herein agreed to be done and upon the recommendation and certificate of the Engineer, payment at the rates above specified shall be made, provided, that nothing contained herein shall be construed to affect the right hereby reserved by the Board of Public Works to reject the whole or any portion of the aforesaid work, should the certificate be found to be inconsistent with the terms of this agreement or otherwise improperly given.

All of said payments shall be made by Local Improvement warrants and bonds issued in accordance with the Charter and Ordinances of the City of Bellingham, and the Laws of the State of Washington upon Local Improvement Fund District No. 519, and the said part.... of the second part agree.... to look solely to said Local Improvement Fund, District No. 519 for the payment for said work, and in no event shall the City of Bellingham, in its corporate capacity, become liable under this contract for the payment of any sum whatsoever. Provided, said City shall re-imburse itself in full for its costs as specified in Sec. 55, Chap. 98, Laws of Washington 1911, out of first moneys paid into said fund.

It is hereby expressly provided that no claim shall be made by the contractor upon the said Local Improvement District, for any portion of the contract price herein provided to be paid by the issuance of local improvement bonds or warrants on said District, to the contractor until in pursuance of the Law, Charter and Ordinance under which this improvement is made, such bonds or warrants can be legally issued.

This contract is made and entered into with reference to the Charter and Ordinances of the City of Bellingham as the same are now in force, and the Laws of the State of Washington, and the provisions of said Ordinance, Charter and Laws, relating to the subject matter of this contract, are hereby made a part hereof, with the same effect as

if said provisions were herein incorporated and expressly set forth.

In Witness Whereof, Said party of the first part has caused these presents to be signed by its Mayor and attested by its City Comptroller, and said parties of the second part have hereunto set their hands the day and year first above written.

THE CITY OF BELLINGHAM,

By A. M. Muir, Mayor.

MORAN BROS.,

A. L. Moran (Seal)

Attest: Chas. A. McLennan, City Comptroller.

(Indorsed: Excerpt from Exhibit "A" including pages 1 and 15 to 19, inclusive.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation,

Plaintiff,

vs.

AL MORAN and W. T. MORAN, co-partners do-
ing business as Moran Brothers; THE CITY
OF BELLINGHAM, a municipal corporation
organized and existing under and by virtue
of the laws of the State of Washington; THE
BELLINGHAM NATIONAL BANK, a cor-
poration organized under the laws of the
United States of America; MORSE HARD-
WARE COMPANY, a corporation; WHID-
BY ISLAND SAND & GRAVEL COMPANY,
a corporation; E. K. WOOD LUMBER COM-
PANY, a corporation; MORRISON MILL
COMPANY, a corporation; K. SAUSET;
CAINE GRIMSHAW COMPANY, a corpor-
ation,

Defendants.

Order.

It appearing that this is an action brought to enforce an equitable lien by plaintiff herein upon moneys in the hands of the City of Bellingham, earned by defendants, Al Moran and W. T. Moran, co-partners as Moran Bros., on the Maryland Street improvement under Ordinance of the City of Bellingham No. 2773, and on the Iowa Street

improvement under Ordinance of the City of Bellingham, No. 2796;

And it appearing to the Court by the return of the United States Marshal that the defendants, Al Moran and W. T. Moran, cannot be found within this jurisdiction, and that they have absented themselves from their usual place of abode within this jurisdiction;

It is here and now ORDERED and ADJUDGED that said defendants, Al Moran and W. T. Moran, co-partners as Moran Bros., do appear, plead, answer or demur on or before the 3rd day of July, 1917, at the United States Court House in the City of Bellingham, County of Whatcom, at 2 p. m. and that this order shall be published once a week for six consecutive weeks in the Bellingham Herald, a newspaper of general circulation in this district and in the City of Bellingham, County of Whatcom.

Done in open court this 28th day of May, A. D., 1917.

JEREMIAH NETERER, Judge.

(Indorsed: Order. Filed in the U. S. District Court, Western District of Washington, Northern Division, May 28, 1917. Frank L. Crosby, Clerk, by Ed. M. Lakin, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners do-
ing business as Moran Brothers, *et al.,*
Defendants.

Affidavit of Service.

United States of America, District and State of
Washington, County of King:—ss.

L. B. Stedman, being first duly sworn, on his
oath deposes and says:

That he is one of the proctors for the plaintiff
herein.

That an order to appear, plead, answer or de-
fend of July, 1917, at the hour of 2 o'clock P. M.,
return to the complaint herein on or before the 3rd
day of July, 1917, was duly made by this Honorable Court on the 28th
day of May, 1917, and was duly published in the
Bellingham Herald, a newspaper of general circu-
lation published and issued at Bellingham, in What-
com County, State of Washington, for seven con-
secutive weeks, beginning with the 29th day of
May, 1917, as more particularly appears by the
affidavit of E. G. Earle hereto attached and made
a part of this affidavit of service, and that neither
of said defendants, Al Moran or W. T. Moran, has

entered any appearance in this action or filed any plea, answer or demurrer.

L. B. STEDMAN.

Subscribed and sworn to before me this July 16th, 1917.

(Seal)

ROSE E. MOHR,
Notary Public in and for the State of
Washington, residing at Seattle.

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 128-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*
vs.

AL MORAN and W. T. MORAN, co-partners doing business as Moran Brothers; THE CITY OF BELLINGHAM, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington; THE BELLINGHAM NATIONAL BANK, a corporation organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; K. SAUSET; CAINE GRIMSHAW COMPANY, a corporation,
Defendants.

Order.

It appearing that this is an action brought to enforce an equitable lien by plaintiff herein upon moneys in the hands of the City of Bellingham, earned by defendants, Al Moran and W. T. Moran, co-partners as Moran Bros., on the Maryland street improvement under Ordinance of the City of Bellingham No. 2773, and on the Iowa street improvement under Ordinance of the City of Bellingham, No. 2796;

And it appearing to the Court by the return of the United States Marshal that the defendants, Al Moran and W. T. Moran, cannot be found within this jurisdiction, and that they have absented themselves from the usual place of abode within this jurisdiction;

It is here and now ordered and adjudged that said defendants, Al Moran and W. T. Moran, co-partners as Moran Bros., do appear, plead, answer or demur on or before the 3rd day of July, 1917, at the United States Court House in the City of Bellingham, County of Whatcom, at 2 p. m., and that this order shall be published once a week for six consecutive weeks in Bellingham Herald, a newspaper of general circulation in this district and in the City of Bellingham, County of Whatcom.

Done in open Court this 28th day of May, A. D. 1917.

JEREMIAH NETERER, Judge.

The foregoing is a full, true and correct copy of the original order made on the 28th day of May, 1917.

Witness my hand and official seal this 28th day of May, 1917.

FRANK L. CROSBY, Clerk,
By ED M. LAKIN, Deputy.

Affidavit of Publication.

State of Washington, County of King:—ss.

E. G. Earle, being first duly sworn, says that he is the Business Manager of the Bellingham Herald, which is a daily newspaper published and issued daily regularly at Bellingham in Whatcom County, State of Washington, and is of general circulation in said County and State; that the No. 128-E, American Surety Company vs. Moran, of which the one hereto attached is a true and correct copy, was published in said newspaper once a week for seven weeks, being published seven consecutive times, first publication being on the 29th day of May, 1917, and the last on the 3rd day of July, 1917. That said notice was published in the regular and entire issue of every number of said newspaper during said period and times of publication; that said notice was published in the newspaper proper and not in a supplement; that the charges herein made are at the regular rates charged for such advertising, and that the same or any part thereof has not been paid.

E. G. EARLE.

Subscribed and sworn to before me this 5th day of July, 1917.

(Seal)

C. M. NAFF,

Notary Public in and for the State of Washington, residing at Bellingham.

(Indorsed: Affidavit of Service. Filed in the U. S. District Court, Western District of Washington, Northern Division, July 16, 1917. Frank L. Crosby, Clerk, by Ed. M. Lakin, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners do-
ing business as Moran Bros., *et al.,*
Defendants.

**Order of Default Against Al Moran and W. T. Moran,
Co-partners as Moran Bros.**

This cause coming on for hearing upon the application of plaintiff herein for an order of default against Al Moran and W. T. Moran, co-partners doing business as Moran Brothers, and the Court being duly advised in the premises, as more particularly appears by the affidavit of L. B. Stedman and E. G. Earle filed herein, to-wit: that the order to appear, plead, answer or demur made by this Court on the 28th day of May, 1917, was duly published as therein directed in the Bellingham Herald for once a week for seven consecutive weeks, beginning with the 29th day of May, 1917; and it further appearing that neither of said de-

defendants has appeared herein or filed any plea, answer or demurrer to the complaint; and it further appearing by the return of the United States Marshal herein, that the said Al Moran and W. T. Moran could not be found in the State of Washington, and were absent therefrom;

NOW, THEREFORE, it is hereby ORDERED and ADJUDGED that the default of said Al Moran and W. T. Moran, co-partners as Moran Brothers, and each of them, be, and it hereby is entered;

It is hereby further ORDERED and ADJUDGED that said Al Moran and W. T. Moran are hereby declared and adjudged to have no right, title or interest in or to any moneys in the possession of the City of Bellingham on account of the Maryland Street improvement, under ordinance of the City of Bellingham No. 2773, or on the Iowa Street improvement under Ordinance of the City of Bellingham No. 2796, superior to the right, title and interest of the plaintiff in said moneys.

Done in open court this 16th day of July, A. D., 1917.

(Signed) JEREMIAH NETERER, Judge.

(Indorsed: Order of Default Against Al Moran and W. T. Moran, co-partners as Moran Bros. Filed in the U. S. District Court, Western District of Washington, Northern Division, July 16th, 1917. Frank L. Crosby, Clerk, by Ed M. Lakin, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners do-
ing business as Moran Bros.; THE CITY OF
BELLINGHAM, a municipal corporation or-
ganized and existing under and by virtue of
the laws of the State of Washington; THE
BELLINGHAM NATIONAL BANK, a cor-
poration organized under the laws of the
United States of America; MORSE HARD-
WARE COMPANY, a corporation; WHID-
BY ISLAND SAND & GRAVEL COMPANY,
a corporation; E. K. WOOD LUMBER COM-
PANY, a corporation; MORRISON MILL
COMPANY, a corporation; K. SAUSET;
CAINE GRIMSHAW COMPANY, a corpora-
tion, *Defendants.*

Answer of Defendant, The Bellingham National Bank.

The Answer of the Bellingham National Bank,
a corporation organized under the laws of the
United States of America, one of the above named
defendants, to the Bill of Complaint of the above
named plaintiff, admits, denies and alleges as fol-
lows:

I.

Answering the allegations of Paragraph I

thereof, said defendant states that it is without knowledge concerning the allegations therein contained.

II.

Answering paragraph II thereof said defendant admits the allegations therein contained.

III.

Answering paragraph III thereof said defendant admits the allegations therein contained.

IV.

Answering paragraph IV thereof said defendant admits the allegations therein contained.

V.

Answering paragraph V thereof said defendant admits the allegations therein contained.

VI.

Answering paragraph VI thereof said defendant admits the allegations therein contained.

VII.

Answering paragraph VII thereof said defendant admits the allegations therein contained.

VIII.

Answering paragraph VIII thereof said defendant admits the allegations therein contained.

IX.

Answering paragraph IX thereof said defendant admits the allegations therein contained.

X.

Answering paragraph X thereof said defendant admits the allegations therein contained.

XI.

Answering paragraph XI thereof said defendant admits the allegations therein contained.

XII.

Answering paragraph XII thereof said defendant admits the allegations therein contained.

XIII.

Answering paragraph XIII thereof said defendant admits the allegations therein contained.

XIV.

Answering paragraph XIV thereof said defendant admits the allegations therein contained.

XV.

Answering paragraph XV thereof said defendant admits that Al Moran and W. T. Moran, co-partners as Moran Brothers, have assigned to said Bellingham National Bank, all sums coming to them under said contract for advances made by said Bellingham National Bank to said Moran Brothers; and admits that said assignment was given as security for money advanced by said bank to said Moran Brothers, and in this behalf alleges that the amount due to said Bellingham National Bank by virtue of said assignments and said advances on both the Maryland Street contract and the Iowa Street contract, amounts to \$4814.22, of which \$3,033.15 is due for advancements made on the Maryland Street contract, and of which \$3,033.15, \$600.00 draws interest at 8% per annum from September 11, 1916; \$1,862.60 draws inter-

est from March 2, 1917, at 8% per annum; \$570.55 draws interest from April 12, 1917.

That said claim by reason of said advancements amounts to \$3033.15 upon said Maryland street contract, and \$1,781.07 upon the Iowa Street contract in plaintiff's Bill of Complaint referred to.

XVI.

Answering paragraph XVI said defendant admits that plaintiff is liable to the payment of all claims properly filed against said Moran Brothers and said bond by reason of labor or material furnished Moran Brothers. Admits that said plaintiff is not liable to the Bellingham National Bank under its bond on said Maryland Street contract, but in this connection said defendant avers that the moneys due from the City of Bellingham to Moran Brothers under said Maryland Street contract is due and payable to said defendant, The Bellingham National Bank, under and by virtue of its said assignment.

XVII.

Answering paragraph XVII thereof, said defendant states that it is without knowledge concerning the allegations therein contained. In this behalf said defendant avers that it is entitled to have said moneys due under said contract paid to it by virtue of its said assignments sufficient to pay its claim against said Moran Brothers.

XVIII.

Answering paragraph XVIII thereof said defendant states that it is without knowledge concerning the allegations therein contained.

XIX.

Answering paragraph 19 thereof defendant denies the allegations therein and each of them.

XX.

Answering paragraph 20 thereof said defendant denies the allegations therein contained and each of them.

XXI.

Answering paragraph 21 thereof said defendant states that as to the allegations concerning the claims of the other defendants than Moran Brothers and The Bellingham National Bank that it has no knowledge.

Further answering said paragraph said defendant alleges in this connection that it is entitled to have the money due to Moran Brothers paid to it under and by virtue of its assignments sufficient to pay all money advanced by it to said Moran Brothers as hereinafter stated.

FOR A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S FIRST CAUSE OF ACTION AND BY WAY OF COUNTER CLAIM ALLEGES AND STATES AS FOLLOWS:

I.

That on or about the 29th day of July, 1916, said defendants, Al Moran and W. T. Moran, co-partners as Moran Bros., entered into a contract with the City of Bellingham for the improvement of Maryland Street from Ellis Street to James Street in the City of Bellingham at the agreed con-

tract price of \$5,087.80, said improvement to consist of clearing and paving the asphalt pavement as more particularly appears by a contract entered into under Ordinance of the City of Bellingham No. 2773, creating Local Improvement District No. 519.

That under and by virtue of said contract and for extra work done thereunder, there is a total due in the sum of \$5293.09. That said City of Bellingham is a City within the State of Washington.

II.

That to secure the faithful performance of all of the provisions of said contract, said defendant, The City of Bellingham, required said Moran Bros. to make, execute and deliver to it a surety bond conditioned that said Moran Bros. should faithfully perform all the provisions of such contract and pay all laborers, mechanics, sub-contractors and material men, and all persons who should supply said person or persons or sub-contractors with provisions or supplies for the carrying on of said work, all pursuant to the provisions of Sections 1159, 1160 and 1161 as amended, of Remington & Ballinger's Codes of the State of Washington, and that by virtue of said requirement, the plaintiff herein furnished to said City of Bellingham such bond. That the words, terms and conditions of said bond are within the knowledge of said plaintiff herein.

III.

That from time to time during the progress

of said work of improving Maryland street by said Moran Bros., said defendant, The Bellingham National Bank, advanced to said Moran Bros., to aid in the construction and improvement of said street, certain moneys amounting to a total of \$3033.15. That to secure the repayment of said sum said defendant required that said Moran Bros. assign and transfer to them all moneys, warrants and bonds to be issued to said Moran Bros., on account of the improvement of said Maryland Street, which assignment was in writing and was in words and figures as follows, to-wit:

“Bellingham, Washington,
“Sept. 11, 1916.

“Chas. A. McLennan,
“City Comptroller:

“Please deliver to The Bellingham National Bank all warrants and bonds to be issued on account of L. I. D. No. 519 Maryland Street from Ellis to James.

“Moran Bros.,
“By Al. Moran.”

IV.

That on or about the 11th day of September, 1916, said assignment was duly filed with the City Comptroller of the City of Bellingham, Washington, and was accepted by him and the same has remained on file in said office since said time.

V.

That of said \$3033.15 so advanced to said

Moran Bros., by said defendants, The Bellingham National Bank, for the improvement of said Maryland Street, all of said money was used by said defendants Moran Bros., in paying for labor and material used in the improvement of said Maryland Street and that if the same had not been advanced by said defendant, The Bellingham National Bank, to said Moran Bros., said plaintiff would be liable at this time under its bond for an amount equal to the amount advanced by said Bellingham National Bank.

VI.

That of said sum, defendant, The Bellingham National Bank, itself paid, or caused to be paid, the sum of \$290.15 to various and sundry laborers who worked for Moran Bros., upon said Maryland Street. Said defendant further avers that Moran Bros. paid out of the moneys advanced by said defendant, The Bellingham National Bank, to Moran Bros., and secured by said assignment, the sum of \$1111.20 for sand, gravel, cement and other material furnished by the said Whidby Island Sand & Gravel Co., to said Moran Bros., for the improvement of said Maryland Street, which said \$1111.20 is a part of the money due to said bank under and by virtue of said assignment.

Said defendant further avers that Moran Bros. paid out of the moneys advanced by said defendant, the Bellingham National Bank, to Moran Bros., and secured by said assignment, the sum of \$133.25 for material furnished by the said

Morse Hardware Co., to said Moran Bros., for the improvement of said Maryland Street, which said \$133.25 is a part of the money due to said bank under and by virtue of said assignment.

Said defendant further avers that Moran Bros. paid out of the moneys advanced by said bank to Moran Bros., and secured by said assignment, the sum of \$34.50 for material furnished by the said Bellingham Bay Improvement Co. to said Moran Bros., for the improvement of said Maryland Street, which said \$34.50 is a part of the money due to said bank under and by virtue of said assignment.

That the remainder of said sum due to said bank under and by virtue of said assignment was paid directly to Moran Bros., and by them used to pay for labor and material employed and used in the construction of said Maryland Street.

Answering plaintiff's second cause of action, said defendant, the Bellingham National Bank, denies and alleges as follows:

I.

Answering paragraph I thereof said defendant admits the same.

II.

Answering paragraph II thereof said defendant admits that said contract has been substantially completed; admits that no payments have been made to Moran Bros., or to those furnishing material or labor in said contract; admits that the full amount of the contract price, to-wit: \$3135 remains in the hands of the City of Bellingham.

Further answering said paragraph said defendant denies each and every other allegation therein contained not in this paragraph admitted.

III.

Answering paragraph III thereof said defendant admits that said defendants, Moran Bros., sold, assigned, transferred and set over unto said defendant, The Bellingham National Bank, all warrants, vouchers or bonds to be used in payment of the contract of said defendants, Moran Bros., for advances made by said bank to said Moran Bros.

IV.

Answering paragraph IV thereof said defendant, The Bellingham National Bank, avers that its claim under and by virtue of said assignment as against the bonds and warrants due Moran Bros. on said contract amounts to \$1781.07, with interest on \$1274.12 from May 2, 1917, at the rate of 8% per annum, and \$506.95 thereof from May 9th, 1917, with interest thereon at 8% per annum.

Further answering said paragraph with reference to the claims against said Moran Bros., on said contract said defendant states that it has no knoweldge.

V.

Answering paragraph V thereof said defendant admits that plaintiff is liable to the payment of all proper claims that have been filed with the City of Bellingham against said bond within thirty days after the acceptance thereof, but as to the amount of said claims it states that it has no knowledge.

VI.

Answering paragraph VI thereof said defendant states that it has no knowledge as to the allegations therein contained.

VII.

Answering paragraph VII thereof defendant denies the same and each and every allegation therein contained.

FOR A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S SECOND CAUSE OF ACTION AND BY WAY OF COUNTER CLAIM, ALLEGES AND STATES AS FOLLOWS:

I.

That on or about the 22nd day of September, 1916, the City of Bellingham entered into a contract with defendants, Al Moran and W. T. Moran, co-partners as Moran Bros., for the improvement of Iowa Street from James Street to Woburn Street, in the City of Bellingham, by clearing and grubbing, laying concrete walks and sewers; being known as Local Improvement District No. 527 of the City of Bellingham, Washington, for the agreed compensation of \$3,135.00 and that plaintiff, American Surety Company of New York, pursuant to the provisions of Sections 1159, 1160 and 1161 as amended, of Remington & Ballinger's Codes of the State of Washington, in order to secure the performance of said contract, and the payment of all laborers, mechanics, subcontractors and materialmen, and all persons who shall supply such person

or persons or sub-contractors with materials, supplies and provisions for the carrying on of such work, as surety for said Al Moran and W. T. Moran, executed a bond running to the State of Washington, on or about September 20, 1916, in the penal sum of \$3,135.00, and said bond and contract were accepted by the City of Bellingham, and said bond is kept and held by the City of Bellingham as security for the performance of said contract, and is in full force, effect and virtue.

II.

That under and by virtue of said contract and for extra work done thereunder, there is a total due in the sum of \$3135.00. That said City of Bellingham is a City within the State of Washington.

III.

That from time to time during the progress of said work of improving Iowa Street by said Moran Bros., said defendant The Bellingham National Bank, advanced to said Moran Bros., to aid in the construction and improvement of said street, certain moneys amounting to a total of \$1781.07. That to secure the repayment of said sum said defendant required that said Moran Bros. assign and transfer to them all moneys, warrants and bonds to be issued to said Moran Bros., on account of the improvement of said Iowa Street, which assignment was in writing and was in words and figures as follows, to-wit:

Bellingham, Washington.
Oct. 20, 1916.

Chas. A. McLennan,
City Comptroller,
City of Bellingham, Washington.

Dear Sir:—

Please deliver to the Bellingham National Bank all warrants or bonds to be issued on account of L. I. D. No. 527, Iowa Street from James to Woburn St.

Moran Bros.,
By W. T. Moran.

IV.

That on or about the 20th day of October, 1916, said assignment was duly filed with the City Comptroller of the City of Bellingham, Washington, and was accepted by him and the same has remained on file in said office since said time.

V.

That of said \$1781.07 so advanced to said Moran Bros., by said defendant, The Bellingham National Bank, for the improvement of said Iowa Street, all of said money was used by said defendants Moran Bros. in paying for labor and material used in the improvement of said Iowa Street and that if the same has not been advanced by said defendant, the Bellingham National Bank, to said Moran Bros., said plaintiff would be liable at this time under its bond for an amount equal to the amount advanced by said Bellingham National Bank.

VI.

That of said sum, defendant, The Bellingham National Bank, itself paid or caused to be paid the sum of \$1024.80 to various and sundry laborers who worked for Moran Bros., upon said Iowa Street.

Said defendant further avers that Moran Bros. paid out of the moneys advanced by said bank to Moran Bros., and secured by said assignment, the sum of \$41.25 for material furnished by the said Bellingham Bay Improvement Co., to said Moran Bros., for the improvement of said Iowa Street, which said \$41.25 is a part of the money due to said bank under and by virtue of said assignment.

VII.

That the remainder of said sum due to said bank under and by virtue of said assignment was paid directly to Moran Bros., and by them used to pay for labor and material employed and used in the construction of said Iowa Street.

WHEREFORE, said defendant prays that the temporary restraining order entered herein restraining the City of Bellingham from paying said warrants due under said contract, be dissolved and that said City of Bellingham be authorized, instructed, adjudged and decreed to pay to said defendant, the Bellingham National Bank, out of the bonds or warrants due from defendant, City of Bellingham, to Moran Bros., under the Maryland Street contract set forth in plaintiff's first cause of action herein, the sum of \$3033.15, with interest on \$600 thereof from September 11, 1916, at 8% per an-

num; \$1862.60 thereof with interest at 8% per annum from March 2, 1917, and \$570.55 thereof with interest at 8% per annum from April 12, 1917, and that said defendant, City of Bellingham, be authorized, instructed, adjudged and decreed to pay to said defendant, The Bellingham National Bank, out of the bonds and warrants due to Moran Bros., for the work done by them in the improvement of Iowa Street as set forth in Plaintiff's second cause of action herein in the sum of \$1781.07, with interest on \$1274.12 thereof at 8% per annum from May 2, 1917, and \$506.95 thereof with interest at 8% per annum from May 9, 1917, and that said defendants recover of the plaintiff its costs and disbursements herein and that said defendant be decreed such other and further relief as to the court may seem just, right and equitable in the premises.

SATHER & LIVESEY,

Attorneys and solicitors for the
Defendant, The Bellingham National
Bank, Bellingham, Washington.

State of Washington, County of Whatcom. ss.

VICTOR A. ROEDER being first duly sworn on his oath, deposes and says: That he is the President of The Bellingham National Bank, one of the defendants above named; that he makes this verification for and on behalf of said defendant; that he has read the foregoing Answer; knows the contents thereof and believes the same to be true.

VICTOR A. ROEDER.

Subscribed and sworn to before me this 9th day of June, 1917.

(NOTARIAL SEAL) GEORGE LIVESEY,
Notary Public in and for
the State of Washington,
residing at Bellingham.

(Service admitted and copy received this 9th day of June, 1917. Kellogg & Thompson and Hastings & Stedman, Attorneys and Solicitors for Plaintiff.)

(Indorsed: Answer of Defendant The Bellingham National Bank filed in the U. S. District Court Western Dist. of Washington, Northern Division, June 11, 1917. Frank L. Crosby, Clerk, by Ed M. Lakin, Deputy.)

*In the District Court of the United States, for the
Western District of Washington,
Northern Division.*

No. 9 E.

AMERICAN SURETY COMPANY OF NEW
YORK, a Corporation,
Plaintiff,

vs.

AL MORAN and W. T. MORAN, co-partners doing business as MORAN BROTHERS; THE CITY OF BELLINGHAM, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington; THE BELLINGHAM NATIONAL BANK, a

corporation organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE GRIMSHAW COMPANY, a corporation.

Defendants.

Answer of Morse Hardware Co. to Bill of Complaint.

The Answer of MORSE HARDWARE COMPANY, a corporation, to the Bill of Complaint exhibited against it by the above named Complainant, respectfully showeth:

This answering defendant now and at all times herein, reserving and saving to itself all and all nature of benefits and advantages or exceptions which may be had or taken to the many errors, uncertainties, imperfections and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto or unto so much or such parts thereof as this defendant is advised that it is material or necessary for it to make answer unto, answering says:

1.

Answering the allegations contained in the 1st, 2nd, 3rd, 4th and 7th paragraphs of said Bill of Complaint, this answering defendant admits the same.

2.

As to the allegations contained in the para-

graphs of said bill of complaint other than as above admitted, down to and including paragraph 22 of said bill of complaint, this answering defendant disclaims any interest.

3.

Answering the allegations contained in Complainant's second cause of action beginning with paragraph 1 on page 6 of said bill of complaint, this answering defendant admits the allegations of paragraphs 1, 2 and 5 of said second cause of action, except that it denies the allegation in paragraph 2 that the improvement of Iowa Street has been accepted by the City of Bellingham, and denies that the claims filed against said work exceed the amount due upon the contract therefor.

4.

Answering the allegations contained in paragraph 4 of said second cause of action, this answering defendant says:

That it has a claim against said Moran Brothers and the complainants herein as surety, upon the bond of said Moran Brothers, in the sum of Eight Hundred Seventy-nine Dollars Fifty-five cents (\$879.55) for materials and supplies furnished and used in the work of improving Iowa Street from James Street to Woburn Street, in the City of Bellingham, Washington, under the contract between the said defendant Moran Brothers, and the defendant City of Bellingham, and that it did on the 17th day of May, 1917, pursuant to the statutes of the State of Washington in such case made and

provided, file a notice with the City Comptroller and Ex-officio Clerk of said City of Bellingham, in words and figures as follows, to-wit:

“In the Matter of the Improvement of Iowa Street, in the City of Bellingham, Washington, and the laying down of cement sidewalks on the North side thereof.

To the City of Bellingham,

Whatcom County, Washington.

NOTICE IS HEREBY GIVEN that the undersigned Morse Hardware Company, a corporation, has a claim in the sum of One Thousand and Twenty-three and Forty-three hundredths Dollars (\$1023.43) against the Bond taken from Moran Brothers as principal, and American Surety Company of New York, as surety, for the work of laying down concrete sidewalks on the North side of Iowa Street in said city, and such other work as incident thereto under a contract entered into by said City on one part and the above named Moran Brothers on the other part, which said claim is for materials and supplies furnished to said Moran Brothers to be used and was used in the performance of said work and labor.

Morse Hardware Company,

By R. I. Morse, President.”

That subsequent to the filing of said claim there was paid on account thereof the sum of \$43.88, leaving the balance of Nine Hundred Seventy-nine Dollars Fifty-five Cents (\$979.55) due and owing

to plaintiff, the whole of which remains wholly unpaid.

WHEREFORE this answering defendant prays that its claim in the sum of \$979.55 be by decree of this court allowed and established, and that it have judgment for the payment of the same against the complainant herein, together with its costs in this behalf laid out and expended, and such other and further relief as to this honorable court may seem meet and equitable in the premises.

HADLEY & ABBOTT,
Attorneys for Defendant Morse
Hardware Co.

State of Washington, County of Whatcom. ss.

R. I. Morse being first duly sworn on oath deposes and says: that he is the president of Morse Hardware Company, the answering defendant above named; that he makes this verification for and on behalf of said answering defendant; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

R. I. MORSE.

Subscribed and sworn to before me this 8th day of June, 1917.

(SEAL) A. M. HADLEY,
Notary Public in and for the State
of Washington, residing at Bel-
lingham, in said State.

(Service of the within Answer is hereby acknowledged and admitted, and copy thereof received this 9th day of June, 1917, at Bellingham, Wash. Kellogg & Thompson, Att'ys for Complainant.)

(Indorsed: Answer of Morse Hardware Co. to Bill of Complaint. Filed in the U. S. District Court Western District of Washington, Northern Division. June 11, 1917. By Ed M. Lakin, Deputy.)

*In the District Court of the United States, for the
Western District of Washington,
Northern Division.*

No. 9 E.

AMERICAN SURETY COMPANY OF NEW
YORK, a Corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners doing
business as Moran Brothers; THE CITY OF
BELLINGHAM, a municipal corporation or-
ganized and existing under and by virtue of
the laws of the State of Washington; THE
BELLINGHAM NATIONAL BANK, a cor-
poration organized under the laws of the
United States of America; MORSE HARD-
WARE COMPANY, a corporation; WHIDBY
ISLAND SAND & GRAVEL COMPANY, a
corporation; E. K. WOOD LUMBER COM-
PANY, a corporation; MORRISON MILL
COMPANY, a corporation; K. SAUSET;
CAINE GRIMSHAW COMPANY, a corpora-
tion, *Defendants.*

Answer of E. K. Wood Lumber Company, a Corporation, to Bill of Complaint.

The answer of E. K. Wood Lumber Company, a Corporation, to the Bill of Complaint exhibited against it by the above named complainant, respectfully showeth:

This answering defendant now and at all times herein, reserving and saving to itself all and all nature of benefits and advantages or exceptions which may be had or taken to the many errors, uncertainties, imperfections and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto or unto so much or such parts thereof as this defendant is advised that it is material or necessary for it to make answer unto, answering says.

1.

Answering the allegations contained in the 1st, 2nd, 3rd, 4th and 7th paragraphs of said Bill of Complaint, this answering defendant admits the same.

2.

As to the allegations contained in the paragraphs of said Bill of Complaint other than as above admitted, down to and including paragraph 22 of said Bill of Complaint, this answering defendant disclaims any interest.

3.

Answering the allegations contained in complainant's second cause of action beginning with paragraph 1 on page 6 of said Bill of Complaint,

this answering defendant admits the allegations of paragraphs 1, 2 and 5 of said second cause of action, except that it denies the allegation in paragraph 2 that the improvement of Iowa Street has been accepted by the City of Bellingham, and denies that the claims filed against said work exceed the amount due upon the contract therefor.

4.

Answering the allegations contained in paragraph 4 of said second cause of action, this answering defendant says:

That it has a claim against said Moran Brothers, and the complainant herein as surety, upon the bond of said Moran Brothers, in the sum of One Hundred Eighteen Dollars, Sixteen Cents (\$118.16) for lumber and materials furnished and used in the work of improving Iowa Street from James Street to Woburn Street, in the City of Bellingham, Washington, under the contract between the said defendant, Moran Brothers, and the defendant, City of Bellingham, and that it did, on the 26th day of May, 1917, pursuant to the statutes of the State of Washington in such case made and provided, file a notice with the City Comptroller and Ex-Officio Clerk of said City of Bellingham, in words and figures as follows, to-wit:

“To the City of Bellingham:

Notice is hereby given that the undersigned, E. K. Wood Lumber Company, a corporation, has a claim in the sum of One Hundred Eighteen Dollars Sixteen Cents (\$118.16) against the Bond taken

from Al Moran and W. T. Moran, co-partners as Moran Brothers, as principals, and American Surety Company of New York, as surety, for the work of clearing, grubbing and laying concrete walks and sewers on Iowa Street, from James Street to Woburn Street in the City of Bellingham, said claim being for lumber furnished and used in said work.

E. K. Wood Lumber Company ,
By F. J. Wood, Manager.”

State of Washington, County of Whatcom.—ss.

F. J. Wood being first duly sworn on oath says, that he is manager of E. K. Wood Lumber Company, the corporation above named; that the above and foregoing notice and statement of account is true as he verily believes. F. J. Wood.

Subscribed and sworn to before me this 25th day of May, 1917. H. F. Vincent,

(Seal) Notary Public in and for the State of Washington, residing at Bellingham, in said State. And that said claim remains due and wholly unpaid.

WHEREFORE this answering defendant prays that its claim in the said sum of \$118.16 be by decree of this court allowed and established and that it have judgment for the payment of the same against the complainant herein, together with its costs in this behalf laid out and expended, and such other and further relief as to this Honorable Court may seem meet and equitable in the premises.

HADLEY & ABBOTT,
Attorneys for Defendant E. K.
Wood Lumber Co.

State of Washington, County of Whatcom.—ss.

Fred J. Wood being first duly sworn on his oath deposes and says, that he is the resident manager and agent of E. K. Wood Lumber Company, the answering defendant above named; that he makes this verification for and on behalf of said answering defendant; that he has read the foregoing answer, knows the contents thereof and believes the same to be true

FRED J. WOOD.

Subscribed and sworn to before me this 8th day of June, 1917.

A. M. HADLEY,

(Seal) Notary Public in and for the State of Washington, residing at Bellingham, in said State.

(Service of the within answer is hereby acknowledged and admitted and copy thereof received this 9th day of June, 1917, at Bellingham, Wash. Kellogg & Thompson, Attorneys for Complainant.)

(Indorsed: Answer E. K. Wood Lbr. Co. to Bill of Complaint. Filed in the U. S. District Court, Western District of Washington, Northern Division, June 11, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9 E.

AMERICAN SURETY COMPANY OF NEW
YORK, a Corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners, doing business as Moran Brothers; THE CITY OF BELLINGHAM, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington; THE BELLINGHAM NATIONAL BANK, a corporation organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE-GRIMSHAW COMPANY, a corporation, *Defendants.*

Answer.

To the Honorable Jeremiah Neterer, Judge of the
Above Entitled Court:

Comes now the defendant City of Bellingham, a municipal corporation of the first class of the State of Washington, and for answer to the above entitled cause as set forth in the Bill of Complaint on file in the above entitled court, denied, admits and alleges as follows:

I.

Answering paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of said Bill of Complaint, defendant City admits the same.

II.

Answering paragraph 15 of said bill of complaint, defendant city admits that said Al Moran and W. T. Moran, co-partners doing business as Moran Bros., have assigned to the Bellingham National Bank all sums coming to them under said contract; which said money due from said City of Bellingham as trustee for Local Improvement District No. 519 is in the sum of \$5,293.09; but defendant City denies that it has any knoweldge or information sufficient to form a belief as to any of the other allegations contained in said paragraph 15.

III.

Answering paragraph 16 of said bill of complaint, defendant City admits that said plaintiff is liable for the payment of all said claims admitted by said plaintiff in said paragraph, but denies that it has any knowledge or information sufficient to form a belief as to the liability of plaintiff on the claim of the Bellingham National Bank under the said bond.

IV.

Answering paragraph 17 of said bill of complaint, defendant city denies the same and each and every part thereof, and alleges the fact to be: That it is holding the money under an order of this court *pendente lite*.

V.

Answering paragraphs 18, 19 and 20 of said bill of complaint, defendant city denies that it has any knowledge or information sufficient to form a belief as to any of the allegations contained in said paragraph.

VI.

Answering paragraph 21 of said bill of complaint, defendant city denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in said paragraph 21, but avers the fact to be: That it does not know, and is unable to determine, to whom such funds belong and desires to turn said funds into this court for distribution by this court according to the rights of the various claimants therefor.

VII.

Answering paragraph 22 of said bill of complaint, defendant city denies that it has any knowledge or information sufficient to form a belief as to any of the allegations contained in said paragraph.

DEFENDANT CITY OF BELLINGHAM
ANSWERING THE SECOND CAUSE OF
ACTION OF SAID PLAINTIFF AS SET OUT
IN SAID BILL OF COMPLAINT, DENIES,
ADMITS AND ALLEGES AS FOLLOWS:

I.

Answering paragraph 1 of said Second Cause of Action, defendant city admits the same.

II.

Answering paragraph 2 of said second cause of action, defendant city admits that it has not paid said Moran Bros., or anyone in their behalf, or at all, anything on the said contract for the improvement of Iowa Street, but denies each and every other allegation in said paragraph set forth and avers the facts to be: That said work is but partially completed and has been abandoned by said Moran Bros. and that defendant city has notified said plaintiff, American Surety Company, that it looks to said company to immediately proceed and complete said work as provided in said bond and contract, which by the terms of said bond is made a part thereof, and that the said American Surety Company, plaintiff herein, has so far failed, neglected and refused to proceed therewith, to the great damage of defendant city and the property owners in said local improvement district; and defendant further avers, that under the terms of its said contract, no moneys or securities are due and payable until said work is fully completed and accepted by defendant City of Bellingham.

III.

Answering paragraph 3 of said second cause of action, defendant city admits that defendants Moran Bros. did sell or purport to sell and assign, transfer and set over to the Bellingham National Bank the warrants and bonds to be issued by it in payment of said contract; but denies that it has any knowledge or information sufficient to

orable court as it may determine meet and proper.

VIII.

Answering paragraph 8 of said second cause of action, defendant city denies that it has any knowledge or information sufficient to form a belief as to any of the allegations contained in said paragraph.

IX.

Answering paragraph 9 of said second cause of action, defendant city admits the same.

FURTHER ANSWERING SAID COMPLAINT OF PLAINTIFF HEREIN AND AS AN AFFIRMATIVE DEFENSE THERETO, DEFENDANT CITY OF BELLINGHAM ALLEGES AS FOLLOWS, TO-WIT:

I.

That at all times hereinafter mentioned the defendant City of Bellingham was, and now is, a municipal corporation of the first class of the State of Washington.

II.

That at all times hereinafter mentioned said plaintiff, American Surety Company of New York was and still is a corporation duly organized and existing under and by virtue of the laws of the State of New York and is duly authorized to transact business in the State of Washington as a surety company.

III.

That on or about the 20th day of September, 1916, said American Surety Company did execute as a surety, a surety bond in the sum of Three

Thousand One Hundred Thirty-five and no-100 (\$3135.00) Dollars, in which Al Moran and W. T. Moran, co-partners doing business under the firm name and style of Moran Bros., were principals and said American Surety Company were surety thereon; which bond ran to the City of Bellingham and the State of Washington to secure the faithful performance by said principals therein of a certain contract and all the terms and conditions thereof, which said principals had entered into with the City of Bellingham on or about the said 20th day of September, 1916, for the improvement of Iowa Street from James Street to Woburn Street by clearing and grubbing portions of the same and laying a concrete sidewalk on the northerly side thereof, together with necessary sewers, and to secure the payment of all laborers, mechanics, sub-contractors and material men and all persons who should supply such contractors or sub-contractors with material, supplies and provisions for the carrying on of said work; which bond is still in full force and effect.

IV.

That under and by virtue of the terms of said contract, said Moran Bros. were to complete said work on or before the 1st day of December, 1916, and that in the event of their failure so to do, the City of Bellingham was to retain from said contract price as liquidated damages for said Moran Bros.' failure to perform said contract within the time above set forth, the sum of Seven and 50-100 (\$7.50)

Dollars per day for each and every day thereafter that said Moran Bros. failed, neglected or refused to complete said contract; that said work is still uncompleted to the great damage of the City of Bellingham, in the sum of One Thousand Four Hundred and Forty Dollars (\$1440.00), together with the further sum of Seven and 50-100 (\$7.50) Dollars per day until said work is fully completed.

Wherefore, Defendant City of Bellingham Prays as Follows:

1st: That as to said first cause of action, that at the time provided by law for the issuance of bonds and the drawing of warrants for the payment of the work so done by Moran Bros. for the improvement of Maryland Street, it be permitted to tender into the registry of this court the moneys due under said contract to said Moran Bros., to be distributed by this court to the various claimants therefor as to the court shall seem meet and equitable.

2nd: That as to the second cause of action, it be permitted to go hence without delay and that it recover its costs and disbursements herein.

3rd: That as to its affirmative defense and cross complaint, it be given judgment against said Al Moran and W. T. Moran, doing business under the firm name and style of Moran Bros., and the American Surety Company, a corporation, in the sum of One Thousand Four Hundred Forty (\$1440.00) Dollars, as its damages for delay in the completion of said contract, together with the

further sum of Seven and 50-100 (\$7.50) Dollars per day until said work is fully completed.

DAN F. NORTH,

Attorney for Defendant City of Bellingham.
State of Washington, County of Whatcom.—ss.

A. M. Muir, being first duly sworn on oath, says that he is the Mayor of defendant City of Bellingham named in the foregoing Answer, that he has read the same, knows the contents thereof, and that the allegations therein contained are true as he verily believes.

A. M. MUIR.

Subscribed and sworn to before me this 11th day of June, A. D. 1917.

(Notarial Seal)

DAN F. NORTH,

Notary Public in and for the State of
Washington, Residing at Bellingham.

(Service of the within Answer is hereby admitted and acknowledged, and a copy thereof received this 11th day of June, A. D. 1917. Kellogg & Thompson, Attorneys for Complainant.)

(Indorsed: Answer, City of Bellingham. Filed in the U. S. District Court, Western District of Washington, Northern Division, October 2nd, 1917. Frank L. Crosby, Clerk, by Edith A. Handley, Deputy.)

*In the District Court of the United States, for the
Western District of Washington,
Northern Division.*

No. 9 E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners doing
business as MORAN BROTHERS; THE CITY
OF BELLINGHAM, a municipal corporation
organized and existing under and by virtue of
the laws of the State of Washington; THE
BELLINGHAM NATIONAL BANK, a cor-
poration organized under the laws of the
United States of America; MORSE HARD-
WARE COMPANY, a corporation; WHIDBY
ISLAND SAND & GRAVEL COMPANY, a
corporation; MORRISON MILL COMPANY,
a corporation; E. K. WOOD LUMBER COM-
PANY, a corporation; K. SAUSET; CAINE
GRIMSHAW COMPANY, a corporation,
Defendants.

Answer of Morrison Mill Co. to Bill of Complaint.

The Answer of Morison Mill Company, a corpora-
tion, to the Bill of Complaint exhibited against
it by the above named Complainant, respect-
fully showeth:

This answering defendant now and at all times
herein, reserving and saving to itself all and all
nature of benefits and advantages or exceptions
which may be had or taken to the many errors,

uncertainties, imperfections and insufficiencies in the Complainant's said Bill of Complaint contained, for answer thereunto or unto so much or such parts thereof as this defendant is advised that it is material or necessary for it to make answer unto, answering says:

1.

Answering the allegations contained in the 1st, 2nd, 3rd, 4th and 7th paragraphs of said Bill of Complaint, this answering defendant admits the same.

2.

As to the allegations contained in the paragraphs of said Bill of Complaint other than as above admitted, down to and including paragraph 22 of said Bill of Complaint, this answering defendant disclaims any interest.

3.

Answering the allegations contained in Complainant's second cause of action, beginning with paragraph 1 on page 6 of said Bill of Complaint, this answering defendant admits the allegations of paragraphs 1, 2 and 5 of said second cause of action, except that it denies the allegation in paragraph 2 that the improvement of Iowa Street has been accepted by the City of Bellingham, and denies that the claims filed against said work exceed the amount due upon the contract therefor.

4.

Answering the allegations contained in paragraph 4 of said second cause of action, this answering defendant says:

That it has a claim against said Moran Brothers in the sum of Seventy-five Dollars Sixteen Cents (\$75.16) for lumber furnished and used in the work of improving Iowa Street from James Street to Woburn Street, in the City of Bellingham, Washington, under the contract between the said defendant Moran Brothers and the defendant City of Bellingham, and that it did, on the 6th day of June, 1917, pursuant to the statutes of the State of Washington in such case made and provided, file a notice with the City Comptroller and Ex-officio Clerk of said City of Bellingham, in words and figures as follows, to-wit:

“To the City of Bellingham, Washington:

Notice is hereby given that the undersigned Morrison Mill Company, a corporation, has a claim in the sum of \$75.16 against the bond taken from Al Moran and W. T. Moran, co-partners as Moran Brothers, as principal, and American Surety Company of New York as surety, for the work of clearing, grubbing and laying concrete walks and sewers on Iowa Street from James Street to Woburn Street, in the City of Bellingham, said claim being for lumber furnished and used in said work.

MORRISON MILL COMPANY,

By Archie Morrison, Manager.

State of Washington, County of Whatcom.—ss.

Archie Morrison being first duly sworn on oath says, that he is manager of Morrison Mill Company, the corporation above named; that the

above and foregoing claim and statement of account is true as he verily believes.

ARCHIE MORRISON.

Subscribed and sworn to before me this 4th day of June, 1917.

A. M. HADLEY,

(Seal) Notary Public in and for the State of Washington, residing at Bellingham, in said State.

And that said claim remains due and wholly unpaid.

WHEREFORE, this answering defendant prays that its claim in the said sum of \$75.16 be by decree of this court allowed and established and that it have judgment for the payment of the same against the complainant herein, together with its costs in this behalf laid out and expended, and such other and further relief as to this Honorable Court may seem meet and equitable in the premises.

HADLEY & ABBOTT,

Attorneys for Defendant Morrison Mill Company.

State of Washington, County of Whatcom.—ss.

Archie Morrison, being first duly sworn on oath deposes and says, that he is the manager of Morrison Mill Company, the answering defendant above named; that he makes this verification for and on its behalf; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

ARCHIE MORRISON.

Subscribed and sworn to before me this 8th day of June, 1917.

(Seal) A. M. HADLEY,
Notary Public in and for the State
of Washington, residing at Bellingham, in said State.

(Service of the within Answer is hereby acknowledged and admitted, and copy thereof received this 9th day of June, 1917, at Bellingham, Washington. Kellogg & Thompson, Attorneys for Complainant.)

(Indorsed: Answer of Morrison Mill Company to Bill of Complaint. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 11, 1917. Frank L. Crosby, Clerk, by Ed M. Lakin, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9 E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners doing
business as Moran Brothers; THE CITY OF
BELLINGHAM, a municipal corporation or-
ganized and existing under and by virtue of
the laws of the State of Washington; THE
BELLINGHAM NATIONAL BANK, a cor-

poration organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE-GRIMSHAW COMPANY, a corporation,
Defendants.

Answer of K. Sauset to Bill of Complaint.

The Answer of K. Sauset to the Bill of Complaint exhibited against him by the above named complainant respectfully shows:

This answering defendant for answer unto so much or such parts of the Bill of Complaint herein as this defendant is advised that it is material or necessary for it to make answer thereto, answering says:

Answering the allegations contained in the 1st, 2nd, 3rd, 4th, 9th, 11th, 12th and 13th paragraphs of said Bill of Complaint, this answering defendant admits the same.

II.

Answering paragraph 14 of said Bill of Complaint this answering defendant alleges that he disclaims all interest in and to the allegations contained in said paragraph, except that this defendant alleges that he has a claim against said Moran Brothers and the complainant herein as surety upon the bond of said Moran Brothers in the sum of \$2,125,36, for labor and materials furnished and

used in the work of improving Maryland Street from Ellis Street to James Street in the City of Bellingham, Washington, known as Local Improvement District No. 519, and that on or about the 15th day of May, 1917, pursuant to the statutes of the State of Washington in such cases made and provided, he filed a notice with the City Comptroller and Ex-officio Clerk of the City of Bellingham, Washington, in words and figures as follows, to-wit:

Bellingham, Washington, May 15th, 1917.
To the City Comptroller, City Treasurer, Mayor
and City Council of the City of Bellingham,
Washington:

NOTICE IS HEREBY GIVEN that the undersigned, K. Sauset, has a claim in the sum of \$2125.36 against the bond taken from Moran Brothers, principal, and the American Surety Company of New York, surety, for the work of improving Maryland Street from Ellis Street to James Street, known as Local Improvement District No. 519, of the Local Improvement Districts of the City of Bellingham, Washington, by paving the same with asphalt upon concrete base, etc., that said claimant did furnish labor and materials to the said principal under said bond and there remains unpaid to them on account thereof the amount above stated, to-wit, \$2125.36.

Signed: K. Sauset.

That no part of the amount stated in said notice has been paid to this answering defendant, and that there is now due and owing to this de-

fendant a balance for and on account of the labor and materials so furnished, in the sum of \$2125.36.

III.

Answering paragraph 15 of said Bill of Complaint this defendant disclaims any interest in the matters alleged in said paragraph.

IV.

Answering paragraph 16 of said Bill of Complaint, this defendant admits that the plaintiff is liable to this defendant in the amount hereinbefore stated.

V.

Answering paragraphs 17, 18, 19, 20 and 21, this defendant disclaims any interest in and to the matters alleged in said paragraphs except that this answering defendant alleges that he has filed a claim against Moran Brothers and the complainant herein as hereinbefore set forth, and that this answering defendant alleges that he is willing and ready to present his claim to the above entitled Court, and to make proof thereof.

VI.

Answering paragraph 22 of said Bill of Complaint, this answering defendant admits the same.

VII.

Answering the allegations contained in complainant's second cause of action, this answering defendant admits the allegations of paragraphs 1, 2 and 5, of said second cause of action, except that he denies the allegations in paragraph 2 thereof that the improvement of Iowa Street has been accepted by the City of Bellingham.

VIII.

Answering paragraph 4 of said second cause of action, this answering defendant alleges that he has a claim against the said Moran Brothers and the complainant herein as surety upon the bond of said Moran Brothers in the sum of \$90.00 for material and supplies and the rental of equipment furnished and used in the work of improving Iowa Street, from James Street to Woburn Street, in the City of Bellingham, Washington, under the contract between said defendant Moran Brothers and the defendant City of Bellingham, being known as Local Improvement District No. 527. That he has not filed any notice with the City Comptroller of his claim against said Moran Brothers and the complainant herein for said amount for the reason that the improvement of said street has not been accepted by the City of Bellingham, but this answering defendant alleges that he is ready and willing to appear in this Court and make proof of the amount and justness of his said claim and demand as herein alleged.

IX.

This answering defendant disclaims all interest in and to the allegations contained in said second cause of action.

WHEREFORE this answering defendant prays that his claim in the total sum of \$2,215.36 be by decree of this court allowed and established and that he have judgment for the payment of the same against the complainant herein, together with

his costs in this behalf laid out and expended, and for such other and further relief as to this honorable court may seem meet and equitable in the premises.

KELLOGG & THOMPSON,

Attorneys for Defendant K. Sauset.

State of Washington, County of Whatcom.—ss.

K. Sauset, being first duly sworn on oath, says: That he is one of the defendants named in the within entitled action; that he has read the above and foregoing Answer, knows the contents thereof, and that the same is true, as he verily believes.

K. SAUSET,.

Subscribed and sworn to before me this 28th day of June, 1917.

JOHN A. KELLOGG,

(Seal) Notary Public for Washington,
Residing at Bellingham.

(Indorsed: Answer, K. Sauset. Filed in the U. S. District Court, Western District of Washington, Northern Division, October 2nd, 1917. Frank L. Crosby, Clerk, by Edith A. Handley, Deputy.)

*In the District Court of the United States for the
Western District of Washington,*

Northern Division

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners doing
business as Moran Brothers; THE CITY OF
BELLINGHAM, a municipal corporation or-
ganized and existing under and by virtue of
the laws of the State of Washington; THE
BELLINGHAM NATIONAL BANK, a corpo-
ration organized under the laws of the United
States of America; MORSE HARDWARE
COMPANY, a corporation; WHIDBY
ISLAND SAND & GRAVEL COMPANY, a
corporation; E. K. WOOD LUMBER COM-
PANY, a corporation; MORRISON MILL
COMPANY, a corporation; K. SAUSET;
CAINE GRIMSHAW COMPANY, a corpora-
tion, *Defendants.*

**Answer of Caine Grimshaw Company, a Corporation,
to Bill of Complaint.**

The Answer of Caine Grimshaw Company, a
corporation, to the Bill of Complaint exhibited
against it by the above named complainant respect-
fully shows:

This answering defendant for Answer unto so
much or such parts of the Bill of Complaint herein
as this defendant is advised that it is material or

necessary for it to make answer thereto, answering says:

I.

Answering the allegations contained in the 1st, 2nd, 3rd, 4th, 10th, 11th, 12th and 13th paragraphs of said Bill of Complaint, this answering defendant admits the same.

II.

Answering paragraph 14 of said Bill of Complaint, this answering defendant alleges that it disclaims all interest in and to the allegations contained in said paragraph, except that this defendant alleges that it has a claim against said Moran Brothers and the complainant herein as surety upon the bond of said Moran Brothers, in the sum of \$1,268.19, for materials and supplies furnished and used in the work of improving Maryland Street, from Ellis Street to James Street, in the City of Bellingham, known as Local Improvement District No. 519, and that it did on the 28th day of November, 1916, pursuant to the statutes of the State of Washington, in such case made and provided, file a Notice with the City Comptroller and Ex-officio Clerk of the City of Bellingham, in words and figures as follows, to-wit:

Bellingham, Wash., November 27, 1916.
See Remington & Ballinger Codes and Statutes of the State of Washington, Volume No. 1, Section 1161. Also Chapter 28 of Session Laws of 1915.

To the Board of Public Works, City Council and
City Comptroller, Bellingham, Wash.

Notice is hereby given that the undersigned, Caine-Grimshaw Company, has a claim in the sum of Twelve Hundred Sixty-eight and 19-100 Dollars (\$1268.19) and interest at 8% from December 1st, 1916, until claim is paid against the bond taken from Moran Bros., contractors, Bellingham, Washington, and the American Surety Company of New York, N. Y., for the furnishing of cement for the concrete base of the pavement of Maryland Street. Said pavement extending on Maryland Street from Ellis Street to James Street in the City of Bellingham. Known as Local Improvement District No. 519. Contract let July 24th 1916.

Signed: Caine Grimshaw Company.

Per P. H. Browne, Mgr.

That no part of the amount stated in said Notice has been paid to this answering defendant, and there is now a balance due and owing to this defendant on account of the materials and supplies so furnished, of \$1,268.19.

III.

Answering paragraph 15 of said Bill of Complaint this defendant disclaims any interest in the matters alleged in said paragraph.

IV.

Answering paragraph 16 of said Bill of Complaint, this defendant admits that the plaintiff is liable to this defendant in the amount heretofore stated.

V.

Answering paragraphs 17, 18, 19, 20 and 21, this defendant disclaims any interest in and to the matters alleged in said paragraphs, except that this answering defendant alleges that it has filed a claim against Moran Brothers and the complainant herein as heretofore set forth, and this answering defendant alleges that it is willing and ready to present this claim to the above entitled Court and to make proof thereof.

VI.

Answering the paragraph 22 of said Bill of Complaint, this answering defendant admits the same.

VII.

Answering the allegations contained in complainant's second cause of action, this answering defendant admits the allegations of paragraphs 1, 2 and 5, of said second cause of action, except that it denies the allegation in paragraph 2 that the improvement of Iowa Street has been accepted by the City of Bellingham.

VIII.

Answering paragraph 4 of said second cause of action, this answering defendant says that it has a claim against the said Moran Brothers and the complainant herein as surety upon the bond of said Moran Brothers, in the sum of \$47.28 for materials and supplies furnished and used in the work of improving Iowa Street from James Street to Woburn Street, in the City of Bellingham, Wash-

ington, under the contract between the said defendant Moran Brothers and the defendant City of Bel-
 lingham, being known as Local Improvement Dis-
 trict No. 527. That it has not filed any notice with
 the City Comptroller of its claim against said Moran
 Brothers, and the complainant herein, for the rea-
 son that the improvement of said street has not been
 accepted by the city, but this answering defendant
 alleges that it is willing and ready to appear in this
 Court and make proof of the amount and justness
 of its said claim and demand as above alleged.

IX.

This answering defendant disclaims all inter-
 est in and to the other allegations contained in said
 second cause of action.

WHEREFORE, this answering defendant
 prays that its claim in the total sum of \$1,315.47
 be by decree of this Court allowed and established,
 and that it have judgment for the payment of the
 same against the complainant herein, together with
 its costs in this behalf laid out and expended, and
 for such other and further relief as to this Honor-
 able Court may seem meet and equitable in the
 premises.

KELLOGG & THOMPSON,
 Attorneys for Defendant Caine
 Grimshaw Company.

State of Washington, County of Whatcom.—ss.

P. H. Browne, being first duly sworn on oath,
 deposes and says: That he is the manager of the
 Caine Grimshaw Company, a corporation, the an-

swering defendant above named. That he makes this verification for and on behalf of said answering defendant. That he has read the foregoing Answer, knows the contents thereof, and believes the same to be true.

P. H. BROWNE.

Subscribed and sworn to before me this 27th day of June, 1917.

JOHN A. KELLOGG,

(Seal)

Notary Public For Washington
Residing at Bellingham.

(Indorsed: Answer, Caine-Grimshaw Co., a corporation, to Bill of Complaint. Filed in the District Court, Western District of Washington, Northern Division, October 2nd, 1917. Frank L. Crosby, Clerk, by Edith A. Handley, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners doing
business as Moran Brothers; THE CITY OF
BELLINGHAM, a municipal corporation or-
ganized and existing under and by virtue of the
laws of the State of Washington; THE BEL-
LINGHAM NATIONAL BANK, a corpora-

tion organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE GRIMSHAW COMPANY, a corporation,

Defendants.

JOHN BIEKERT, NORMAN TRANSFER, FRANK MIDDLESTADT, JOHN KASTNER, SAM SEVIER, BELLINGHAM CONCRETE WORKS, W. M. SEEGER, and THOMAS M. LYNN & M. J. WILLIAMS, co-partners as LYNN & WILLIAMS,

Additional Defendants.

Amended Bill of Complaint.

To the Honorable Jeremiah Neterer, Judge of the Above Entitled Court:

Comes now the above named plaintiff, and petitions this Honorable Court for leave to file its amended bill of complaint herein bringing in additional parties hereto as follows, to-wit:

John Biekert, Norman Transfer, Frank Middlestadt, John Kastner, Sam Sevier, Bellingham Concrete Works, W. M. Seeger, and Thomas M. Lynn & M. J. Williams, co-partners as Lynn & Williams.

1.

That at all times herein mentioned said plaintiff, American Surety Company of New York, was,

and still is, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and was and is a resident and citizen of the State of New York, and is duly authorized to transact business in the State of Washington, and has paid its annual license fees last due to the State of Washington.

2.

That at all times herein mentioned, the above named defendants, Al Moran and W. T. Moran, were, and still are, co-partners doing business under the firm name and style of Moran Bros., and were both residents and citizens of the State of Washington, and of the Western District thereof, residing at the City of Bellingham, in Whatcom County, Washington.

3.

That at all times herein mentioned, the defendant, City of Bellingham, was, and still is, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington.

4.

That at all times herein mentioned, the defendant, Bellingham National Bank, was, and still is, a corporation organized and existing under the national banking act of the United States of America, and was a citizen and resident of the State of Washington, and of the Western District thereof, having its place of business, residence and citizenship in the City of Bellingham, Whatcom County, Washington.

5.

That at all times herein mentioned, Morse Hardware Company was, and still is, a corporation organized and existing under and by virtue of the laws of the State of Washington and was, and still is, a resident and citizen of the State of Washington, having its place of business, residence and citizenship in the City of Bellingham, Whatcom County, Washington.

6.

That at all times herein mentioned, defendant, Whidby Island Sand & Gravel Company, was, and still is, a corporation organized and existing under and by virtue of the laws of the State of Washington, and was, and still is, a resident and citizen of the State of Washington, having its place of business, residence and citizenship in the City of Bellingham, Whatcom County, Washington.

7.

That at all times herein mentioned, defendant, E. K. Wood Lumber Company, was, and still is, a corporation organized and existing under and by virtue of the laws of the State of Washington, and was, and still is, a resident and citizen of the State of Washington, having its place of business, residence and citizenship in the City of Bellingham, Whatcom County, Washington.

8.

That at all times herein mentioned defendant, Morrison Mill Company, was, and still is, a corporation organized and existing under and by virtue

of the laws of the State of Washington, and was, and still is, a resident and citizen of the State of Washington, having its place of business, residence and citizenship in the City of Bellingham, Whatcom County, Washington.

9.

That at all times herein mentioned defendant, K. Sauset, was, and still is, a resident and citizen of the State of Washington, having his residence in the City of Bellingham, Whatcom County, Washington.

10.

That at all times herein mentioned, defendant, Caine Grimshaw Company, was, and still is, a corporation organized and existing under and by virtue of the laws of the State of Washington, and was, and still is, a resident and citizen of the State of Washington, having its place of business, residence and citizenship in the City of Bellingham, Whatcom County, Washington.

11.

That for a first cause of action against defendants, and all of them, plaintiff alleges as follows, to-wit: That on or about the 29th day of July, 1916, said defendants, Al Moran and W. T. Moran, co-partners as Moran Bros., entered into a contract with the City of Bellingham for the improvement of Maryland Street from Ellis Street to James Street in the City of Bellingham at the agreed contract price of \$5,087.80,—said improvement to consist of clearing and paving the asphalt pavement as more particularly appears by a contract entered

into under Ordinance of the City of Bellingham No. 2773, creating Local Improvement District No. 519, a copy of which contract is hereto affixed, marked "Exhibit A", and made a part hereof.

12.

That to secure the performance of said contract entered into under the terms and conditions thereof, and to secure the payment due to all laborers, mechanics, sub-contractors, materialmen and persons who should supply such person or persons, or sub-contractors with materials, supplies and provisions for carrying on such work, said Moran Bros. and the plaintiff herein, American Surety Company of New York, executed a bond unto the State of Washington in the form provided by law in the penal sum of \$5,087.80, which said bond was duly executed on the 27th day of July, 1916, and filed with the City of Bellingham, and that said contract and said bond were accepted by the City of Bellingham.

13.

That said contract has been fully completed and accepted by the City of Bellingham, but no payment has been made thereon either to said contractor or to the materialmen hereinafter named who have filed claims against said bond.

14.

That plaintiff is advised and so alleges the fact to be that the following claims have been presented against said bond, to-wit:

Morrison Mill Company for the sum of...\$ 65.56

Craine Grimshaw Company for the sum
of 1,268.19
Morse Hardware Company for the sum of 133.25
K. Sauset for the sum of..... 2,125.36

15.

That plaintiff is informed, and verily believes, that said Al Moran and W. T. Moran, co-partners as Moran Bros., have assigned to the Bellingham National Bank all sums coming to them under said contract for certain advances made by the said Bellingham National Bank to said Moran Bros., and plaintiff avers that said assignment was given to said Bellingham National Bank as security for money to be advanced, the exact amount of said claim of said Bellingham National Bank, by reason of said assignment, plaintiff does not know, but is informed that said claim of the Bellingham National Bank against Moran Bros. amounts to \$5,419.17, but whether all of said claim is by reason of advances upon said Maryland Street contract, plaintiff does not know.

16.

Plaintiff further avers that it is liable to the payment of all of said claims excepting the claim of the Bellingham National Bank under its said bond.

17.

Plaintiff further avers that defendant, City of Bellingham, is about to pay over to said Moran Bros., or to their assignee, Bellingham National Bank, the full amount of the contract price of said

bond, without requiring the application of any of said sums due said Moran Bros. to the payment of said claims filed against said Moran Bros. on said bond.

18.

Plaintiff further avers that said Al Moran and W. T. Moran, co-partners as Moran Bros., are insolvent, and are unable to respond to any claim of the plaintiff that it may have by reason of the payment of said claims to filed against said bond, and that if said sums due to said Moran Bros. are paid to said Moran Bros., or said Bellingham National Bank, their assignee, this plaintiff will have no protection on its liability on said claims to pay said claims or source from which it can seek reimbursement for payment thereof.

19.

Plaintiff further avers that in law and equity the sums unpaid to Moran Bros. on said contract ought of right to be applied in payment of materialmen, laborers and sub-contractors employed in prosecuting said work, and those furnishing materials and supplies to such persons, to the end that all claims should be paid that are justly chargeable to said work out of the contract price agreed to be paid therefor, to the extent that such sums so unpaid by the City of Bellingham on said contract, undistributed, are adequate therefor.

20.

Plaintiff further avers that in law and in equity it has a lien by virtue of becoming the surety

of the said Moran Bros. on their said contract with the City of Bellingham, upon all sums due them under said contract, to reimburse it for all sums it may be forced to pay on account of said claims so filed.

21.

Plaintiff further avers that it is not advised as to the validity of the claims of the other defendants than Moran Bros. as filed and asserted against said Moran Bros. and said bond, and that said defendants should be brought into this court to present their claims and offer proof in support thereof, and said City of Bellingham should be restrained from paying said money due on said contract, or any portion thereof, to said Moran Bros. or to said Bellingham National Bank, but should be permitted to pay said money into the registry of this court to be distributed in the payment, so far as the same is adequate therefor, of the laborers, materialmen, contractors, and sub-contractors who have performed labor or furnished materials upon said contract.

22.

Plaintiff further avers that this is a controversy between citizens and residents of different states, to-wit, between the American Surety Company of New York, a citizen and resident of the State of New York, and said defendants, all of whom are citizens and residents of the State of Washington, and that this action involves more than \$3,000, exclusive of interest and costs.

FOR A SECOND CAUSE OF ACTION, this plaintiff avers:

1.

That on or about the 22nd day of September, 1916, the City of Bellingham entered into a contract with defendants, Al Moran and W. T. Moran, co-partners as Moran Bros., for the improvement of Iowa Street from James Street to Woburn Street, in the City of Bellingham, by clearing and grubbing, laying concrete walks and sewers, for the agreed compensation of \$3,135.00, and that plaintiff, American Surety Company of New York, in order to secure the performance of said contract, and the payment of all laborers, mechanics, sub-contractors and materialmen, and all persons who shall supply such person or persons or sub-contractors with materials, supplies and provisions for the carrying on of such work,—as surety for said Al Moran and W. T. Moran, executed a bond running to the City of Bellingham, on or about September 20, 1916, in the penal sum of \$3,135.00, and said contract and bond were accepted by the City of Bellingham, and said bond is kept and held by the City of Bellingham as security for the performance of said contract, and is in full force, effect and virtue, and this plaintiff recognizes and always has recognized its liability thereunder, according to its true intent, tenor and meaning,—a copy of which said contract is hereto attached, marked “Exhibit B”, and made a part hereof.

2.

That said defendants, Moran Bros., have substantially completed said contract for the improvement of Iowa Street, and same has been accepted by the City of Bellingham, but that no payments have been made to said Moran Bros. or to those furnishing material and labor on said contract, and the full amount of the contract price, to-wit, \$3,135.00, remains in the hands of the City of Bellingham to be applied toward the payment of work done under said contract.

3.

That plaintiff is informed and verily believes that said defendants, Moran Bros., purported to sell, assign, transfer and set over unto the defendant, Bellingham National Bank, the warrants, vouchers or bonds to be issued in payment of the contract of said defendants, Moran Bros., to the City of Bellingham for advances theretofore or thereafter to be made by said Bellingham National Bank, and said assignment was given as security for money so advanced or to be advanced.

4.

Planitiff further avers that the aggregate amount of all the claims against said Moran Bros. for said work exceeds the amount of said contract price, and the following claims are asserted against said contract price, exclusive of the Bellingham National Bank (which claims an assignment from the City of Bellingham of all of the warrants to be issued by said city for said work): John Biekert,

Norman Transfer, Frank Middlestadt, John Kastner, Sam Sevier, Bellingham Concrete Works, W. M. Seeger, and Lynn & Williams.

5.

That of said claimants above mentioned, John Biekert, Norman Transfer Company, Frank Middlestadt, John Kastner, Sam Sevier, Bellingham Concrete Works, W. M. Seeger, and Lynn & Williams had filed no claims at the time of the commencement of this action but have since filed claims with the City Comptroller.

6.

Plaintiff further avers that said Iowa Street Improvement was abandoned by said Moran Bros. before the completion thereof and the City of Bellingham advertised for bids therefor, and said improvement was completed, and the American Surety Company of New York, plaintiff herein, advanced to said City of Bellingham the full sum necessary to pay for the completion of said work in cash, to-wit, the sum of \$548.54.

7.

Plaintiff further avers that it is liable to the payment of all of the claims that have been filed with the City of Bellingham against said bond within thirty days after the acceptance thereof, and that said claims exceed the amount due upon said contract.

8.

Plaintiff further avers that it is informed and verily believes that said defendants, Moran Bros.,

have no means or property out of which a judgment could be satisfied or out of which they can or could indemnify this plaintiff for any sum it may be called upon to advance in the payment of said claims, and that if the sums due under said contract are paid to said Moran Bros., or to said Bellingham National Bank, this plaintiff will have no protection for its liability on said bond to pay said claims or source from which it can seek reimbursement for payment thereof.

9.

Plaintiff further avers that in law and in equity the sums unpaid to defendants, Moran Bros., on said contract, ought of right to be applied to the payment of materialmen, laborers and sub-contractors employed in prosecuting said work to the end that all claims should be paid that are justly chargeable to said work out of the contract price agreed to be paid therefor, to the extent that such sums undistributed of said contract price are adequate therefor, and plaintiff avers that its lien in and to the sums due and payable on said contract still unpaid is superior to any lien of the Bellingham National Bank in or to the same for moneys advanced by it, and that in law and in equity said Bellingham National Bank is not entitled to receive from the City of Bellingham the moneys due to said Moran Bros. on said contract under any assignment made by said Moran Bros. to it, but that said balance due upon said contract should be paid into court to be distributed by this Honorable Court as in law and

equity it may be determined to be meet and proper.

10.

Plaintiff further avers that this controversy in this second cause of action is between citizens and residents of different states, to-wit, between the American Surety Company of New York, a citizen and resident of the State of New York, and all of said defendants, who are citizens and residents of the State of Washington, and involves more than \$3,000, exclusive of interest and costs.

11.

Plaintiff incorporates in its second cause of action herein each and every allegation set forth and contained in its first cause of action touching the residence and citizenship and corporate capacity of the plaintiff and defendants herein, and makes the same a part of this its second cause of action.

WHEREFORE, plaintiff prays that an order may be entered authorizing plaintiff to file this amended bill of complaint, and that this Honorable Court will be pleased to direct that subpoenas may be served upon said additional defendants above named, requiring them to present their claims in this action for determination, and that the prayer of the original bill of complaint herein may be granted, and that such other and further action may be had in the premises as in truth and in equity should obtain.

KELLOGG & THOMPSON,
HASTINGS & STEDMAN,
Solicitors for Plaintiff.

State of Washington, County of King.—ss.

S. H. Melrose, being first duly sworn, on his oath deposes and says: That he is the resident assistant secretary of the American Surety Company of New York, plaintiff above named; that he makes this verification for and on behalf of said plaintiff; that he has read the foregoing amended complaint, knows the contents thereof, and believes the same to be true.

S. H. MELROSE.

Subscribed and sworn to before me this 18th day of February, A. D. 1918.

ROSE E. MOHR,

(Seal) Notary Public in and for the State of Washington, residing at Seattle.

(Indorsed: Amended Bill of Complaint. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, April 2, 1918. Frank L. Crosby, Clerk, by Edith A. Handley, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners doing business as Moran Bros.; THE CITY OF BELLINGHAM, a municipal corporation or-

ganized and existing under and by virtue of the laws of the State of Washington; THE BELLINGHAM NATIONAL BANK, a corporation organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE-GRIMSHAW COMPANY, a corporation,

Defendants.

JOHN BIEKERT, NORMAN TRANSFER, FRANK MIDDLESTADT, JOHN KASTNER, SAM SEVIER, BELLINGHAM CONCRETE WORKS, W. M. SEEGER, and THOMAS M. LYNN and M. J. WILLIAMS, copartners as LYNN & WILLIAMS.

Additional Defendants.

Findings of Fact and Conclusions of Law.

This cause came on to be heard at this term and was argued by counsel, plaintiff appearing by Messrs. Hastings & Stedman of Seattle, Washington, and Kellogg & Thompson of Bellingham, Washington; defendant Bellingham National Bank appearing by Messrs. Sather & Livesey, its attorneys; defendants Morse Hardware Company, E. K. Wood Lumber Company and Morrison Mill Company appearing by Messrs. Hadley & Abbott, their attorneys; defendant city of Bellingham appearing by the city attorney, Mr. Dan F. North of Bellingham,

Washington; defendants K. Sauset and Caine-Grimshaw Company appearing by Messrs. Kellogg & Thompson, their attorneys; Whidby Island Sand & Gravel Company likewise appearing, and the defendants Al Moran and W. T. Moran, co-partners doing business as Moran Brothers appearing not and their default having been regularly entered herein and the court being fully advised in the premises, and the cause having been submitted on stipulated facts and briefs having been submitted by the respective parties, the court now makes the following

FINDINGS OF FACT:

I.

That defendants Al Moran and W. T. Moran were during the times mentioned in the pleadings herein co-partners engaged in the contracting business and were and are insolvent;

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of New York, and was and is a resident and citizen of the State of New York, and authorized to transact business in the State of Washington, and has paid its annual license fees last due to the State of Washington;

That all the defendants, including said bank, are citizens and residents of Bellingham, Washington.

II.

That on or about July 29th, 1916, defendants Moran entered into a contract with the City of Bel-

lingham for the improvement of Maryland Street at the agreed price of \$5,087.80, said improvement to consist of clearing and paving said street as shown by the contract set forth as a part of plaintiff's complaint herein, which it is agreed is a true copy of the contract.

III.

That because of and as required by Sections 1159, 1160 and 1161, as amended, of Rem. & Ball. Codes of the State of Washington, plaintiff furnished to the City of Bellingham a bond complying with the requirements of said statute. Said bond was in the sum of \$5,087.80 and was executed July 27th, 1916, and immediately thereafter filed with the City of Bellingham.

IV.

That said contract has been fully completed and accepted by the City of Bellingham, but no payment has been made thereon, either to the contractor or to the material men who have filed claims against said bond;

That there is due from the City of Bellingham at this time the sum of \$5,721.00.

V.

That the following defendants have filed claims against said bond, said filings being in accordance with the requirement of Rem. & Ball. Code, and that the names of the claimants together with the amounts claimed are as follows:

Morrison Mill Company.....	\$ 65.56
Caine-Grimshaw Company	1,268.19

Morse Hardware Company.....	133.25
K. Sauset	2,125.36

That said claims are proper and lienable items and valid claims against the bond of plaintiff.

VI.

That from time to time subsequent to the execution and filing of said bond during the progress of the work of improving Maryland Street by Moran Brothers, defendant bank advanced to Moran Brothers to aid in the construction and improvement of said street \$3,033.15. That to secure the repayment of said sum Moran Brothers assigned and transferred to said bank their right to all moneys, warrants and bonds to be issued to said Moran Brothers on account of the improvement of said Maryland Street and executed on the 11th day of September, 1916, an assignment of which the following is a copy:

Bellingham, Washington, Sept. 11, 1916.

Chas. A. McLennant,
City Comptroller:

Please deliver to the Bellingham National Bank all warrants and bonds to be issued on account of L. I. D. No. 519, Maryland Street, from Ellis to James.

Moran Bros., by Al Moran.

That on said date said assignment was filed with the city Comptroller of the City of Bellingham, Washington, and was accepted by him and has remained on file in his office since said time.

VII.

That of said \$3,033.15 so advanced to said

Moran Brothers by said Bank for said improvement of Maryland Street all of said money except \$150 was used by said Moran Brothers in paying for labor and material used in the improvement of said Maryland Street.

VIII.

That the defendant bank itself paid and caused to be paid various and sundry laborers who worked on said Maryland Street for Moran Brothers the sum of \$290.15 and after said claim of Morse Hardware Company in the sum of \$133.25 referred to in paragraph five herein, had been filed by the said Morse Hardware Company, said defendant bank paid said sum to said Morse Hardware Company.

IX.

That of said \$3,033.15, \$1,111.20 was paid to the Whidby Island Sand & Gravel Company for sand, gravel and cement furnished for the improvement of said street, and that of said sum of \$3,033.15, \$34.50 was paid to the Bellingham Bay Improvement Company for material furnished Moran Brothers for the improvement of said Maryland Street. That the remainder of said \$3,033.15, exclusive of said sums of \$290.15, \$133.25, \$1,111.20 and \$34.50, was paid directly to Moran Brothers for the purpose of paying labor and material employed and used in the construction of said Maryland Street, and the same, except \$150 has been so used by said Moran Brothers for the payment of said labor and material; that said labor

and material thus paid for, if they had not been paid were lienable items as against the money due from defendant city to Moran Brothers, and likewise lienable against the bond of plaintiff. That such claims, however, have not been filed with the City of Bellingham, or against said bond.

X.

That on or about September 22, 1916, defendants Moran entered into a contract with the City of Bellingham for the improvement of Iowa Street at the agreed price of \$3,135.00, said improvement to consist of clearing and paving said street as shown by the contract set forth as a part of plaintiff's complaint herein, which it is agreed is a true copy of the contract.

XI.

That because of and as required by sections 1159, 1160 and 1161, as amended, of Rem. & Ball. Codes of the State of Washington, plaintiff furnished to the City of Bellingham a bond complying with the requirements of said statute. Said bond was in the sum of \$3,135.00 and was executed September 20th, 1916, and immediately thereafter filed with the City of Bellingham.

XII.

That said contract has been completed and accepted by the City of Bellingham; that no payment has been made on said contract, either to the contractor or material men who have filed claims against said bond; that there is due from the City of Bellingham the sum of \$2,778.05.

XIII.

That the following defendants have filed claims against said bond, said filings being in accordance with the requirements of Rem. & Ball. Code, and that the names of the claimants, together with the amounts claimed are as follows:

Morse Hardware Company	\$1,023.43
K. Sauset	90.00
Whidby Island Sand & Gravel Co.....	622.40
E. K. Wood Lumber Company.....	118.16
Morrison Mill Company	84.16
John Kastner	1.50
John Bickert	18.60
Norman Transfer Company	2.50
Frank Middlestadt	32.40
Sam Sevier	2.80
Bellingham Concrete Works	124.99
Caine Grimshaw Company	47.28
W. M. Seeger	2.50
Thomas M. Lynn and M. J. Williams, co- partners as Lynn & Williams.....	139.80

That said claims are proper and lienable items and valid claims against the bond of plaintiff.

XIV.

That the plaintiff advanced to the City of Bellingham in cash to pay for the completion of the Iowa Street improvement after its abandonment by Moran Brothers, \$548.54.

XV.

That from time to time during the progress of the working of improving Iowa Street by Moran

Brothers defendant bank advanced to Moran Brothers to aid in the construction and improvement of said street \$1,781.07; that to secure the repayment of said sum Moran Brothers assigned and transferred to said bank all moneys, warrants and bonds to be issued to said Moran Brothers on account of the improvement of said Iowa Street, and executed on the 20th day of October, 1916, an assignment, of which the following is a copy:

Bellingham, Washington.
Oct. 20th, 1916.

Chas. A. McLennan,
City Comptroller,

City of Bellingham, Washington:

Dear Sir:

Please deliver to the Bellingham National Bank all warrants or bonds to be issued on account of L. I. D. No. 527, Iowa Street from James to Woburn St.

MORAN BROS.,

By W. T. Moran.

That on said date said assignment was filed with the city comptroller of the City of Bellingham, Washington, and was accepted by him and has remained on file in his office since said time.

XVI.

That of said \$1,781.07 so advanced to said Moran Brothers by said bank for said improvement of Iowa Street, all of said money except \$100 was used by said Moran Brothers in paying for labor and material used in the improvement of said Iowa Street; that the defendant bank itself paid and caused to be paid to various and sundry labor-

ers who worked on said Iowa Street for Moran Brothers the sum of \$1,024.80 and the further sum of \$41.25 for the Bellingham Bay Improvement Company for labor on said street; that the remainder of said \$1,781.07 was paid directly to Moran Brothers for the purpose of paying labor and material employed and used in the construction of said Iowa Street and the same except \$100 has been so used by said Moran Brothers for the payment of said labor and material; that said labor and material thus paid for, if they had not been paid, were lienable items against the money due from defendant city to Moran Brothers, and likewise lienable against the bond of plaintiff; that such claims, however, have not been filed with the City of Bellingham or against said bond.

XVII.

That defendant Bellingham National Bank is entitled to receive \$2,883.15 due it on the Maryland Street job, with interest from September 11th, 1916, at the rate of 7% per annum, the same being the rate of interest paid on the warrants due for said improvement.

XVIII.

That defendant Bellingham National Bank is entitled to receive \$1,681.07 due it on the Iowa Street job, with interest from October 20th, 1916, at the rate of seven per cent the same being the rate of interest paid on the warrants due for said improvement.

Done in open court this 23rd day of May, 1918.

JEREMIAH NETERER, Judge.

From the foregoing Findings of Fact the court makes the following Conclusions of Law:

1—That a decree should be entered herein permitting a delivery of sufficient warrants issued by the defendant city of Bellingham for the improvement of Maryland Street in said city to the Bellingham National Bank in order that said bank may be paid by said warrants \$2,883.15 in principal, with interest thereon from September 11, 1916, at seven per cent per annum, until paid, and decreeing that sufficient of the warrants issued by the defendant City of Bellingham for the improvement of Iowa Street in said city be delivered by said city to the Bellingham National Bank in order that said defendant bank may be paid by said warrants \$1,681.07 in principal, with interest thereon from October 20th, 1916, at seven per cent per annum until paid.

2—That the remainder of said warrants be decreed to be delivered to the plaintiff herein and that the respective claimants named in paragraph V of the Findings herein have judgment against the plaintiff herein for the amount set opposite their respective names, with interest thereon from the 21st day of May, 1917, and that the respective claimants named in paragraph XIII of the Findings herein have judgment against the plaintiff herein for the amount set opposite their respective names, with interest thereon from the 4th day of February, 1918.

118 *American Surety Company of New York vs.*

Done in open court this 23rd day of May,
1918.

JEREMIAH NETERER, Judge.

APPROVED:

Attorneys for Plaintiff.

O. K. AS TO FORM:

HADLEY AND ABBOTT,

Attorneys for Morse Hardware Company, E.
K. Wood Lumber Company and Morrison Mill
Company.

D. W. FEATHERKILE,

Attorney for City of Bellingham.

KELLOGG & THOMPSON,

Attorneys for K. Sauset and Caine-Grimshaw
Company.

WHIDBY ISLAND SAND & GRAVEL CO.,

For Whidby Island Sand & Gravel Company.

SATHER & LIVESEY,

Attorneys for Bank.

(Indorsed: Findings of Fact and Conclusions
of Law. Filed in the U. S. District Court, Western
District of Washington, Northern Division. May
24, 1918. Frank L. Crosby, Clerk, by Edith A.
Handley, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN AND W. T. MORAN, co-partners doing business as Moran Brothers; THE CITY OF BELLINGHAM, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington; THE BELLINGHAM NATIONAL BANK, a corporation organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHID-BY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE GRIMSHAW COMPANY, a corporation, *Defendants.*

JOHN BIEKERT, NORMAN TRANSFER, FRANK MIDDLESTADT, JOHN KASTNER, SAM SEVIER, BELLINGHAM CONCRETE WORKS, W. M. SEEGER, and THOMAS M. LYNN and M. J. WILLIAMS, co-partners as Lynn & Williams, *Additional Defendants.*

Plaintiff's Exceptions to Defendant Bellingham National Bank's Findings of Fact and Conclusions of Law.

Comes now the above named plaintiff, American Surety Company of New York, and excepts to the proposed findings of fact and conclusions of law herein, as follows, to-wit:

1.

Excepts to the first finding of fact, because the same does not find, as a fact admitted by the pleadings, that all the defendants are citizens and residents of Bellingham, Washington.

2.

Excepts to the 17th so-called finding of fact, which is as follows:

“That defendant Bellingham National Bank is entitled to receive \$2,883.15 due it on the Maryland Street job, with interest from September 11th, 1916, at the rate of 7% per annum, the same being the rate of interest paid on the warrants due for said improvement,”—

upon the ground that said finding is not a finding of fact but is a conclusion of law and is not included in any fact stipulated in this cause, but is a deduction and conclusion therefrom, and if proper at all is a conclusion of law and not a finding of fact and further excepts because said fact or conclusion, so styled finding of fact No. XVII, is not proper or justifiable from the admitted or stipulated facts.

3.

Excepts to the 18th so-called finding of fact, which is as follows:

“That defendant Bellingham National Bank is entitled to receive \$1,681.07 due it on the Iowa Street job, with interest from October 20th, 1916, at the rate of seven per cent the same being the rate of interest paid on the warrants due for said improvement”—

upon the ground that said finding is not a finding of fact but is a conclusion of law and is not included in any fact stipulated in this cause, but is a deduction and conclusion therefrom, and if proper at all is a conclusion of law and not a finding of fact; and further excepts because said fact or conclusion, so styled finding of fact No. XVIII, is not proper or justifiable from the admitted or stipulated facts.

4.

Plaintiff further excepts to the first conclusion of law, upon the ground that said conclusion of law is an erroneous application of the law applicable to this cause to the facts stipulated; and upon the further ground that from the facts stipulated a conclusion should be drawn by the court and decree be entered directing the sale of all the warrants to satisfy all claims filed by creditors, laborers or materialmen against said contractors and the bond of the plaintiff, and the balance, if any, remaining to be delivered to said Bellingham National Bank; and further excepts to said conclusion because there is

no justification or authority authorizing the allowance to said bank of seven per cent.

5.

Plaintiff excepts to the second conclusion of law, upon the ground that said conclusion of law is an erroneous application of the law applicable to this cause to the facts stipulated.

6.

Plaintiff further excepts to the findings of fact and conclusions of law upon the ground that all the defendants are not named in the title thereof.

HASTINGS & STEDMAN,

Attorneys for Plaintiff.

The foregoing exceptions of the plaintiff to the findings of fact and conclusions of law were presented to the court before the signing of the findings of fact and conclusions of law, and are hereby allowed.

JEREMIAH NETERER, Judge.

(Indorsed: Plaintiff's Exceptions to Findings of Fact and Conclusions of Law. Filed in the U. S. District Court, Western District of Washington, Northern Division, May 24, 1918. Frank L. Crosby, Clerk, by Edith A. Handley, Deputy.

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners do-
ing business as Moran Brothers; THE CITY
OF BELLINGHAM, a municipal corporation
organized and existing under and by virtue
of the laws of the State of Washington; THE
BELLINGHAM NATIONAL BANK, a cor-
poration organized under the laws of the
United States of America; MORSE HARD-
WARE COMPANY, a corporation; WHID-
BY ISLAND SAND & GRAVEL COMPANY,
a corporation; E. K. WOOD LUMBER COM-
PANY, a corporation; MORRISON MILL
COMPANY, a corporation; K. SAUSET;
CAINE GRIMSHAW COMPANY, a corpora-
tion, *Defendants.*

JOHN BIEKERT, NORMAN TRANSFER,
FRANK MIDDLESTADT, JOHN KAST-
NER, SAM SEVIER, BELLINGHAM CON-
CRETE WORKS, W. M. SEEGER, and
THOMAS M. LYNN and M. J. WILLIAMS,
co-partners as Lynn & Williams,

Additional Defendants.

Conclusions of Law Suggested by Plaintiff.

This cause coming on for hearing, upon the stipulated facts filed herein and upon the pleadings, and the court, being duly advised in the premises, makes the following conclusions of law, to-wit:

1.

That a decree be entered herein directing a sale of sufficient of the warrants issued by the defendant, City of Bellingham, for the improvement of Maryland Street to pay the claims of Morrison Mill Company, \$65.56; Caine-Grimshaw Company, \$1,268.19; and K. Sauset, \$2,125.36, with interest from May 21, 1917, at 6 % per annum, and that the balance of said warrants be delivered to the Bellingham National Bank.

2.

That sufficient of the warrants issued by the defendant, City of Bellingham, for the improvement of Iowa Street, be directed to be sold and the proceeds paid into the court to satisfy the claims of:

Morse Hardware Company	\$1,023.43
K. Sauset	90.00
Whidby Island Sand & Gravel Co.....	622.40
E. K. Wood Lumber Company.....	118.16
Morrison Mill Company	84.16
John Kastner	1.50
John Biekert	18.60
Norman Transfer Co.	2.50
Frank Middlestadt	32.40

Bellingham National Bank et al. 125

Sam Sevier	2.80
Bellingham Concrete Works	124.99
Caine-Grimshaw Co.	47.28
W. M. Seeger	2.50
Thomas M. Lynn and M. J. Williams, co- partners as Lynn & Williams.....	139.80

and the balance thereof be delivered to the said Bellingham National Bank.

.....Judge.

The foregoing conclusions of law, presented by plaintiff, were presented to the court before the conclusions of law were signed, and were by the court refused, to which refusal the plaintiff excepts, and its exception is hereby allowed.

JEREMIAH NETERER, Judge.

(Indorsed: Plaintiff's Suggested Conclusions of Law. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, May 24, 1918. Frank L. Crosby, Clerk, by Edith A. Handley, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners doing business as Moran Brothers; THE CITY OF BELLINGHAM, a municipal corporation

organized and existing under and by virtue of the laws of the State of Washington; THE BELLINGHAM NATIONAL BANK, a corporation organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE-GRIMSHAW COMPANY, a corporation,

Defendants.

JOHN BIEKERT, NORMAN TRANSFER, FRANK MIDDLESTADT, JOHN KASTNER, SAM SEVIER, BELLINGHAM CONCRETE WORKS, W. M. SEEGER and THOMAS M. LYNN and M. J. WILLIAMS, co-partners as Lynn & Williams,

Additional Defendants.

this suit, said stipulations being in writing and being on file herein and thereupon upon considera-

Judgment and Decree.

This cause came on to be heard at this term and was argued by counsel, plaintiff appearing by Messrs. Hastings & Stedman of Seattle, Washington, and Kellogg & Thompson of Bellingham, Washington; defendant Bellingham National Bank appearing by Messrs. Sather & Livesey, its attorneys; defendants Morse Hardware Company, E. K. Wood Lumber Company and Morrison Mill

Company appearing by Messrs. Hadley & Abbott, their attorneys; defendant City of Bellingham appearing by the City Attorney, Mr. Dan F. North of Bellingham, Washington; defendants K. Sauset and Caine-Grimshaw Company appearing by Messrs. Kellogg & Thompson, their attorneys; Whidby Island Sand & Gravel Company likewise appearing, and the defendants Al Moran and W. T. Moran, co-partners doing business as Moran Brothers, appearing not and their default having been regularly entered herein and the facts having heretofore been stipulated by all the parties to the action thereof it was ordered, adjudged and decreed as follows:

That sufficient of the warrants issued by the defendant City of Bellingham for the improvement of Maryland Street in said city be delivered by said city to the Bellingham National Bank in order that said bank may be paid by said warrants \$2,883.15, with interest thereon at the rate of seven per cent per annum from September 11, 1916.

That sufficient of the warrants issued by the defendant City of Bellingham for the improvement of Iowa Street in said city be delivered by said city to the Bellingham National Bank in order that said defendant bank may be paid by said warrants \$1,681.07, with interest thereon at the rate of 7% per annum from October 20th, 1916;

It is further Ordered, Adjudged and Decreed that the remaining warrants issued by the defendant City of Bellingham for the improvement of

Maryland Street and of Iowa Street in said city be delivered by said city to plaintiff.

It is further Ordered that the Morrison Mill Company, Caine-Grimshaw, Morse Hardware Company and K. Sauset have judgment and the same is hereby awarded against plaintiff in the respective sum of \$65.56, \$1,268.19, \$133.25 and \$2,-125.36, with interest thereon from the 21st day of May, 1917.

It is further Ordered, Adjudged and Decreed that Morse Hardware Company, K, Sauset, Whidby Island Sand & Gravel Company, E. K. Wood Lumber Company, Morrison Mill Company, John Kastner, John Bickert, Norman Transfer Company, Frank Middlestadt, Sam Sevier, Bellingham Concrete Works, Caine Grimshaw Company, W. M. Seeger, Thomas M. Lynn and M. J. Williams, co-partners as Lynn & Williams, have judgment and the same is hereby awarded against plaintiff in the respective sums of \$1,023.43, \$90.00, \$622,-40, \$18.16, \$84.16, \$1.50, \$18.60, \$2.50, \$32.40, \$2.80, \$124.99, \$47.28, \$2.50, and \$139.80, with interest from the 4th day of February, 1918.

It is further Ordered, Adjudged and Decreed that no costs shall be taxed against either party.

Done in open court this 23rd day of May, 1918.

JEREMIAH NETERER,
Judge of the above entitled court.

Approved:

Attorneys for Plaintiff.

O. K. AS TO FORM:

HADLEY & ABBOTT,

Attorneys for Morse Hardware Company, E. K. Wood Lumber Company and Morrison Mill Company.

D. W. FEATHERKILE,

Attorney for City of Bellingham.

KELLOGG & THOMPSON,

Attorneys for K. Sauset and Caine-Grimshaw Company.

WHIDBY ISLAND SAND & GRAVEL CO. for
Whidby Island Sand & Gravel Company.

SATHER & LIVESEY,

Attorneys for Bank.

(Indorsed: Judgment and Decree. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, May 24, 1918. Frank L. Crosby, Clerk, by Edith A. Handley, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners
doing business as Moran Brothers; THE
CITY OF BELLINGHAM, a municipal cor-
poration organized and existing under and
by virtue of the laws of the State of Wash-

ington; THE BELLINGHAM NATIONAL BANK, a corporation organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE GRIMSHAW COMPANY, a corporation,

Defendants,

JOHN BIEKERT, NORMAN TRANSFER, FRANK MIDDLESTADT, JOHN KASTNER, SAM SEVIER, BELLINGHAM CONCRETE WORKS, W. M. SEEGER, and THOMAS M. LYNN and M. J. WILLIAMS, co-partners as Lynn & Williams,

Additional Defendants.

Plaintiff's Exceptions to Decree.

Comes now the plaintiff and excepts to the decree prepared by the Bellingham National Bank herein upon the following grounds ,to-wit:

1.

Plaintiff excepts to said decree upon the ground and for the reason that all of the defendants herein are not named in the title to said degree.

2.

Excepts to the whole decree adjudging that the Bellingham National Bank have a preference in its claim against the Moran Brothers to the

claim of the materialmen and laborers and the Surety Company herein.

3.

Excepts to the provision in said decree directing that warrants be delivered to the defendant, City of Bellingham, to equal the claim of the Bellingham National Bank for advances on the Maryland Street improvement in the sum of \$2,883.15, with interest at the rate of seven per cent; excepts to the allowance of any interest, and excepts to the refusal in said decree to direct that the interest accumulated on the warrants be also calculated in the amount of warrants to be turned over to said Bank.

4.

Excepts to the provision in said decree directing that warrants be delivered to the defendant, City of Bellingham, to equal the claim of the Bellingham National Bank for advances on the Iowa Street improvement in the sum of \$1,681.07, with interest at the rate of seven per cent; excepts to the allowance of any interest, and excepts to the refusal in said decree to direct that the interest accumulated on the warrants be also calculated in the amount of warants to be turned over to said Bank.

5.

Excepts to the provision of said decree which provides that the Morrison Mill Company, Caine-Grimshaw Company, Morse Hardware Company and K. Sauset have judgment against the plaintiff for \$65.56, \$1,268.19, \$133.25, and \$2,125.36,

with interest, or at all, upon the ground that there is no provision in law or the facts in this cause justifying the same; and further upon the ground that the allowance of \$133.25 to the Morse Hardware Company is a duplication of the allowance to the Bellingham National Bank, as shown by the ninth finding of fact herein suggested by the Bellingham National Bank.

6.

Excepts to the provisions in said decree allowing judgment in favor of the Morse Hardware Company, K. Sauset, Whidby Island Sand & Gravel Company, E. K. Wood Lumber Company, Morrison Mill Company, John Kastner, John Biekert, Norman Transfer Company, Frank Middlestadt, Sam Sevier, Bellingham Concrete Works, Caine-Grimshaw Company, W. M. Seeger, Thomas M. Lynn and M. J. Williams, co-partners as Lynn & Williams, for the sums therein mentioned, or in any sums whatever, upon the ground that same is not justified under the stipulation of facts or the law applicable to this cause.

HASTINGS & STEDMAN,

Attorneys for Plaintiff.

The foregoing exceptions were presented to the Court before the signing of the decree, and are hereby allowed.

JEREMIAH NETERER,

Judge.

(Indorsed: Plaintiffs Exception to Decree.
Filed in the U. S. District Court, Western Dist. of

Washington, Northern Division, May 24, 1918.
Frank L. Crosby, Clerk, by Edith A. Handley,
Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners do-
ing business as Moran Brothers; THE CITY
OF BELLINGHAM, a municipal corporation
organized and existing under and by virtue of
the laws of the State of Washington; THE
BELLINGHAM NATIONAL BANK, a cor-
poration organized under the laws of the
United States of America; MORSE HARD-
WARE COMPANY, a corporation; WHIDBY
ISLAND SAND & GRAVEL COMPANY, a
corporation; E. K. WOOD LUMBER COM-
PANY, a corporation; MORRISON MILL
COMPANY, a corporation; K. SAUSET;
CAINE GRIMSHAW COMPANY, a corpora-
tion, *Defendants,*

JOHN BIEKERT, NORMAN TRANSFER,
COMPANY, FRANK MIDDLESTADT,
JOHN KASTNER, SAM SEVIER, BEL-
LINGHAM CONCRETE WORKS, W. M.

SEEGER, and THOMAS M. LYNN and M.
J. WILLIAMS, co-partners as Lynn & Wil-
liams, *Additional Defendants.*

Assignment of Errors.

And now, on this 3rd day of June, A. D. 1918, comes plaintiff herein, American Surety Company of New York, by Kellogg & Thompson and Hastings & Stedman, its solicitors, and says that the decree in said cause is erroneous and against the just rights of plaintiff, for the following reasons:

FIRST: Because the admissions of the pleadings and the agreed statement of facts show that the assignments of warrants and bonds from the Moran Brothers, contractors, to the Bellingham National Bank were subsequent in date to the right of subrogation of the plaintiff, American Surety Company of New York, surety upon the contractors' bond.

SECOND: Because by the admissions of the pleadings and the agreed statement of facts and the findings of the Court, it appears that the right of subrogation of the plaintiff, American Surety Company of New York to the rights of the claimants who furnished labor and material on said public works, and to the rights of the City of Bellingham against said fund in the hands of said City, is superior to the rights of said Moran Bros. or their assign, Bellingham National Bank.

THIRD: Because the agreed statement of facts shows that the Bellingham National Bank advanced no moneys until long after the execution of

the contract between the defendants, Moran Brothers, and the City of Bellingham, and long after the execution of the bond by the plaintiff to secure the performance of said contract.

FOURTH: Because from the agreed statement of facts, it appears that the Bellingham National Bank was a mere volunteer and not under any obligation to advance any moneys to said defendants, Moran Brothers, to enable them to perform said contract; that the rights of said bank accrued subsequent in time to the rights of plaintiff under its said bond.

FIFTH: Because it appears from the agreed statement of facts that the claimants who duly filed their claims against said Moran Brothers and against said bond are entitled to be paid out of the contract price due said Moran Brothers still in the hands of said City of Bellingham, and that their rights thereunder are prior to any claim of said Bellingham National Bank.

SIXTH: That said plaintiff is entitled, by virtue of its suretyship upon its bond to said Moran Brothers, to a decree requiring the City of Bellingham to pay said claims that are liens upon said fund in possession of said City of Bellingham, and to pay claims properly payable for material and labor and properly filed with said City of Bellingham before the claims of the Moran Brothers or their assigns are paid.

SEVENTH: Because it appears from the contract for the performance of said work that said

City of Bellingham had the power to withhold payment to said contractors, the defendants, Moran Brothers, of any sums whatsoever, until all claims for material and labor were paid.

EIGHTH: Because, from said statement of facts, and from the pleadings herein and admissions, it appears that the decree of the Honorable District Court should have directed that, out of the proceeds of the warrants issued in payment of said improvements referred to in the bill of complaint and amended bill, all costs of this action and all claims duly filed with the City of Bellingham for labor and materials performed and furnished in the prosecution of said work, be paid, and the balance paid over to the said Moran Brothers, or their assign, the defendant, Bellingham National Bank.

WHEREFORE, said plaintiff prays that said decree be reversed, and that said Court be directed to enter a decree in accordance with the prayer of the bill of complaint.

KELLOGG & THOMPSON,
HASTINGS & STEDMAN,

Attorneys for Plaintiff.

(Service of the within Assignment of Errors by delivery of a copy to the undersigned is hereby acknowledged this 31st day of May, 1918. Hadley & Abbott, Attys. for Morse Hardware Co., Morrison Mill Co. and E. K. Wood Lbr. Co.; Sater & Livesey, Attys. for Bellingham Nat'l Bank and Whidby Island Sand & Gravel Co.; D. W. Feather-

kile, Atty. for City of Bellingham, K. Sauset, Caine-Grimshaw Co. Per P. C. Browne.)

(Indorsed: Assignment of Errors, filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 3, 1918, 4:40 p. m. Frank L. Crosby, Clerk, by Edith A. Handley, Deputy.)

*In the District Court of the United States for the
Western District of Washington,*

Northern Division.

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners doing business as Moran Brothers; THE CITY OF BELLINGHAM, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington; THE BELLINGHAM NATIONAL BANK, a corporation organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE GRIMSHAW COMPANY, a corporation, *Defendants.*

JOHN BIEKERT, NORMAN TRANSFER COM-

PANY, FRANK MIDDLESTADT, JOHN
KASTNER, SAM SEVIER, BELLINGHAM
CONCRETE WORKS, W. M. SEEGER, and
THOMAS M. LYNN and M. J. WILLIAMS,
co-partners as Lynn & Williams,
Additional Defendants.

**Petition for Appeal to United States Circuit
Court of Appeals.**

The above named plaintiff, American Surety Company of New York, conceiving itself aggrieved by the decree made and entered on the 23rd day of May, 1918, in the above entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed; that the temporary injunction heretofore rendered may be maintained in full force pending said appeal; that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

KELLOGG & THOMPSON,
HASTINGS & STEDMAN,
Attorneys for Plaintiff.

The foregoing claim of appeal is allowed.

JEREMIAH NETERER,
Judge.

Dated 3rd day of June, 1918.

(Service of the within Petition for Appeal by delivery of a copy to the undersigned is hereby acknowledged this 31st day of May, 1918. Hadley & Abbott, Attorneys for Morse Hardware Co., Morrison Mill Co. and E. K. Wood Lbr. Co.; Sather & Livesey, Attys. for Bellingham Nat'l Bank and Whidby Island Sand & Gravel Co.; D. W. Featherkile, Atty. for City of Bellingham, K. Sauset, Caine-Grimshaw Co. Per P. C. Browne.)

(Indorsed: Petition for Appeal to United States Circuit Court of Appeals, filed in the U. S. District Court of Appeals, Western Dist. of Washington, Northern Division, June 3, 1918, 4:45 p. m. Frank L. Crosby, Clerk, by Edith A. Handley, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners doing business as Moran Brothers; THE CITY OF BELLINGHAM, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington; THE BELLINGHAM NATIONAL BANK, a corporation organized under the laws of the

United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE GRIMSHAW COMPANY, a corporation,

Defendants.

JOHN BIEKERT, NORMAN TRANSFER COMPANY, FRANK MIDDLESTADT, JOHN KASTNER, SAM SEVIER, BELLINGHAM CONCRETE WORKS, W. M. SEEGER, and THOMAS M. LYNN and M. J. WILLIAMS, co-partners as Lynn & Williams,

Additional Defendants.

Order.

There having been presented to the Court the petition and claim of appeal of the American Surety Company of New York, plaintiff herein, from the judgment and decree rendered in this cause on the 23rd day of May, 1918, and said American Surety Company of New York having petitioned that the temporary injunction entered herein be maintained in force pending said appeal:

It is here and now ordered and adjudged that said claim of appeal be, and it hereby is, allowed.

It is further hereby ordered and adjudged that the temporary injunction heretofore entered in this cause by this Court be maintained in full force and effect pending said appeal.

It is hereby further ordered that the bond for

costs and supersedeas be, and the same is, hereby fixed in the sum of \$10,000.00.

Done in open court this June 3, 1918.

JEREMIAH NETERER,

Judge.

(Indorsed: Order filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 3, 1918, 4:45 p. m. Frank L. Crosby, Clerk, by Edith A. Handley, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners doing business as Moran Brothers; THE CITY OF BELLINGHAM, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington; THE BELLINGHAM NATIONAL BANK, a corporation organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET;

CAINE GRIMSHAW COMPANY, a corporation,
Defendants.

JOHN BIEKERT, NORMAN TRANSFER COMPANY, FRANK MIDDLESTADT, JOHN KASTNER, SAM SEVIER, BELLINGHAM CONCRETE WORKS, W. M. SEEGER, and THOMAS M. LYNN and M. J. WILLIAMS, co-partners as LYNN & WILLIAMS,

Additional Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, American Surety Company of New York, as principal, and National Surety Company, as surety, are held and firmly bound unto the Bellingham National Bank, The City of Bellingham, Morse Hardware Company, Whidby Island Sand & Gravel Company, E. K. Wood Lumber Company, Morrison Mill Company, K. Sauset, Caine Grimshaw Company, John Biekert, Norman Transfer Company, Frank Middlestadt, John Kastner, Sam Sevier, Bellingham Concrete Works, W. M. Seeger, and Thomas M. Lynn and M. J. Williams, co-partners as Lynn & Williams, in the full and just sum of \$10,000.00, to be paid to the said Bellingham National Bank, The City of Bellingham, Morse Hardware Company, Whidby Island Sand & Gravel Company, K. Sauset, Caine Grimshaw Company, John Biekert, Norman Transfer Company, E. K. Wood Lumber Company, Morrison Mill Company, Frank Middlestadt, John Kastner, Sam Sevier, Bellingham Concrete Works, W. M. Seeger,

and Thomas M. Lynn and M. J. Williams, co-partners as Lynn & Williams, their certain attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns jointly and severally, firmly by these presents.

Sealed with our seals and dated this 3rd day of June, in the year of our Lord one thousand, nine hundred and eighteen.

WHEREAS, lately at a District Court of the United States for the Western District of Washington, Northern Division, in a suit depending in said court between the American Surety Company of New York, as plaintiff, and Al Moran and W. T. Moran, co-partners doing business as Moran Brothers, The City of Bellingham, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington, The Bellingham National Bank, a corporation organized under the laws of the United States of America; Morse Hardware Company, a corporation; Whidby Island Sand & Gravel Company, a corporation; E. K. Wood Lumber Company, a corporation; Morrison Mill Company, a corporation; K. Sauset; Caine Grimshaw Company, a corporation; John Biekert, Norman Transfer Company, Frank Middlestadt, John Kastner, Sam Sevier, Bellingham Concrete Works, W. M. Seeger, and Thomas M. Lynn and M. J. Williams, co-partners as Lynn & Williams, as defendants, a decree was rendered against said American Surety Company of New

York, and said American Surety Company of New York having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Bellingham National Bank, the City of Bellingham, Morse Hardware Company, Whidby Island Sand & Gravel Company, E. K. Wood Lumber Company, Morrison Mill Company, K. Sauset, Caine Grimhsaw Company, John Biekert, Norman Transfer Company, Frank Middlestadt, John Kastner, Sam Sevier, Bellingham Concrete Works, W. M. Seeger, and Thomas M. Lynn and M. J. Williams, co-partners as Lynn & Williams, citing and admonishing them to appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, held at the City of San Francisco in said Circuit on the 2nd day of July next.

Now, the condition of the above obligation is such that if the said American Surety Company of New York shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Signed, sealed and delivered in presence of:

AMERICAN SURETY COMPANY OF
NEW YORK,

By A. E. Krull,
Its Resident Vice-President.

AMERICAN SURETY COMPANY OF
NEW YORK,

By Forest la Barre,
Its Resident Assistant Secretary.

NATIONAL SURETY COMPANY,

(Seal)

By George W. Allen,
Resident Vice-President.

Attest: Rollin Whyte,
Resident Assistant Secretary.

Approved by:

JEREMIAH NETERER,
United States District Judge.

(Indorsed: Bond on Appeal, filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 3, 1918, 4:45 p. m. Frank L. Crosby, Clerk, by Edith A. Handley, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, *Plaintiff, Appellant.*

vs.

AL MORAN and W. T. MORAN, co-partners doing business as Moran Brothers; THE CITY OF BELLINGHAM, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington; THE BELLINGHAM NATIONAL BANK, a cor-

poration organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE GRIMSHAW COMPANY, a corporation; JOHN BIEKERT; NORMAN TRANSFER COMPANY; FRANK MIDDLESTADT; JOHN KASTNER; SAM SEVIER; BELINGHAM CONCRETE WORKS; W. M. SEEGER, and THOMAS M. LYNN and M. J. WILLIAMS, co-partners as Lynn & Williams,
Defendants, Respondents.

Stipulation.

It is hereby stipulated and agreed between plaintiff and appellant and defendants and respondents that the findings of fact and the exceptions thereto, the decree and the exceptions thereto, the proposed findings of fact and rejections thereof and exceptions thereto, and the proposed decree and rejections thereof and exceptions thereto, filed by the Court herein, contain all material facts essential to the determination of this cause upon appeal.

KELLOGG & THOMPSON,
HASTINGS & STEDMAN,

Attorneys for Plaintiff and Appellant.

SATHER & LIVESEY,

Attorneys for Defendant and Respondent, Bel-
lingham National Bank.

HADLEY & ABBOTT,

Attorneys for Defendants and Respondents,
Morse Hardware Company, E. K. Wood Lum-
ber Company, and Morrison Mill Company.

D. W. FEATHERKILE,

Attorneys for Defendant and Respondent, City
of Bellingham.

K. SAUSET.

CAINE GRIMSHAW CO., Per P. C. Browne,

For Defendants and Respondents, K. Sauset
and Caine-Grimshaw Company.

WHIDBY ISLAND SAND & GRAVEL CO.,

Defendant and Respondent, Whidby Island
Sand & GRAVEL COMPANY.

(Indorsed: Stipulation, filed in the U. S. Dis-
trict Court, Western Dist. of Washington, North-
ern Division, June 13, 1918. Frank L. Crosby,
Clerk, by Edith A. Handley, Deputy.)

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners do-
ing business as Moran Brothers; THE CITY
OF BELLINGHAM, a municipal corporation
organized and existing under and by virtue of

the laws of the State of Washington; THE BELLINGHAM NATIONAL BANK, a corporation, organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE GRIMSHAW COMPANY, a corporation,
Defendants.

Hastings & Stedman and Kellogg & Thompson, Attorneys for Plaintiff.

Sather & Livesey, Attorneys for Defendant Bellingham National Bank.

Hadley & Abbott, Attorneys for Defendants Morse Hardware Co., E. K. Wood Lumber Co., and Morrison Mill Co.

Kellogg & Thompson, Attorneys for Defendants K. Sauset and Caine-Grimshaw Co.

NETERER, District Judge:

The plaintiff seeks to enjoin the defendant City of Bellingham from delivering to the defendant Moran Brothers or to the defendant Bellingham National Bank certain warrants due on account of improvements in certain streets in the City of Bellingham, alleging that it is a foreign corporation, and that the contract for the improvement of the street was entered into with the defendant city, and that the plaintiff, pursuant to the laws of Washington, executed a bond to the City of Bellingham

conditioned that the said contractors would pay for all labor, material, and supplies used in the construction of said streets, and that the defendant contractors defaulted in said contracts and in the payment of such claims; and that the contractors assigned to the Bellingham National Bank all warrants due to the City of Bellingham for such improvements, and that the right of lien of plaintiff is superior to that of said bank by reason of the relation sustained to said improvement contract, and that plaintiff is subrogated to the rights of the contractors, and its lien as surety is superior to that of the defendant bank.

The defendant bank filed answer denying the right of the plaintiff to relief as against it, alleging that the said assignment was made for value and accepted by the defendant city, and that the bank pursuant to said assignment paid various claims for labor and material and supplies actually used in the construction of said streets, and that the equity of the defendant bank is superior to that of plaintiff.

A motion to strike the answer of the defendant was denied by this court by memorandum decision filed October 10, 1917, in which this court said "that it must be apparent that the plaintiff cannot be subrogated to claims paid by the bank, and that the issue cannot be equitably determined by the motion to strike." No opinion was expressed as to the equitable rights of the parties or the application of the authorities presented to the issue.

The cause is now submitted to the court upon its merits, and it is stipulated by the parties that upon the Maryland Street contract there is due from the defendant city for such improvement the sum of \$5293.09; that claims have been filed against the bond executed by plaintiff in accordance with the provisions of law, as follows: Morrison Mill Co., \$65.56; Caine-Grimshaw Co., \$1268.19; Morse Hardware Co., \$133.25; K. Sauset, \$2125.36; all of said items being valid claims against said bond.

It is further stipulated that subsequent to the execution and filing of said bond during the progress of said improvement, the defendant bank advanced for labor, supplies and material to the Whidby Island Sand & Gravel Co. for sand, gravel, and cement used in said improvement, the sum of \$1111.20; that it paid to various and sundry laborers who worked on said street for said contractors the sum of \$290.15, and paid to the Morse Hardware Co. \$133.25 after said claim had been filed; that it paid to the Bellingham Improvement Co. for material furnished for said improvement to said contractors \$34.50; that the said bank "paid directly to Moran Brothers for the purpose of paying labor and material employed and used in the construction of said Maryland Street" a further sum, making in the aggregate, with the specific payments made by the bank as herein stated, a total sum of \$3033.15, less \$150; that said labor and material thus paid for, if not paid, were lienable items

against the money due from the defendant city to Moran Brothers, and likewise lienable items against the bond of plaintiff; "that such claims, however, have not been filed with the City of Bellingham or against said bond."

It is also stipulated that the City of Bellingham entered into an agreement with the defendant contractors for the improvement of Iowa Street for the sum of \$3135.00; that the plaintiff executed a bond as required by law, and after the execution and filing of said bond the said improvement was completed, and that claims were filed against said bond for material, etc., as follows: Morse Hardware Co., \$1022.43; Whidby Island Sand & Gravel Co., \$630.00; E. K. Wood Lumber Co., \$174.46; Morrison Mill Co., \$75.16; that all of said claims are lienable items and valid against the plaintiff's bond; that the defendant bank, after filing of such bond and during the progress of the work, advanced to said contractors \$1781.07, and secured an assignment of all the warrants issued on account of said improvement, which was executed by the defendant city; that "all of said moneys, except \$100, was used by said Moran Brothers in paying for labor and material used in the improvement of said Iowa Street; that the defendant bank itself paid and caused to be paid to various and sundry laborers who worked on said Iowa Street for Moran Brothers the sum of \$1024.80, and the further sum of \$41.25 for the Bellingham Bay Improvement Company for labor on said street; * * * that said

labor and improvement thus paid for, if it had not been paid, was lienable and a claim against the money due from the defendant city to said contractors, and likewise a charge against the bond of the plaintiff; that said claims, however, have not been filed with the City of Bellingham or against said bond.”

I think the statement of the facts is conclusive that the equities of the case are with the defendant bank. There is no inhibition in the contract against the assignment of any of the warrants, nor is there any stipulation against the issuance of any of said warrants during the progress of the work. The city could lawfully issue to the contractors the entire sum as the work progressed. In this the rights of the parties are distinguished from the issue in *Prairie City Bank vs. United States*, 164 U. S. 227, relied upon by plaintiff. The bank in making the advancements applied the sums advanced to the payment of the claims guaranteed by the plaintiff, and by the application of those funds reduced the liability of the plaintiff under the stipulations of its bond. The plaintiff was not injured by any act of the defendant bank except as to the sum of \$100 and \$150 advanced on the respective contracts, which was not thus applied.

The facts in this case are likewise distinguished from the facts in the *Title Guaranty & Surety Co., v. Dutcher, et al.*, 203 Fed. 167. In that case “no account was kept of the particular work upon which disbursements were made, and it is not

shown how much, if any, of the money borrowed, or other money of his was paid upon the contract in question.”

Nor are the facts in this case controlled by *First National Bank v. City Trust Safe Deposit & Surety Co.*, 114 Fed. 529. In that case no equities obtained in favor of the bank, and the court permitted subrogation, because denying it would have worked injustice to the rights of the City Trust Safe Deposit & Surety Co., no equities being in favor of the bank; while in this case the equities are all in favor of the defendant bank, and no wrong or negligence or inequitable or illegal taking of any character can be attributed to the bank.

A decree may be taken permitting delivery of all warrants by the defendant city to the defendant bank to the amount of the moneys advanced by the defendant bank less \$100 on the Iowa Street improvement, and \$150 on the Maryland Street improvement. No costs to be taxed against either party.

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff.*

vs.

AL MORAN and W. T. MORAN, co-partners do-
ing business as Moran Brothers; THE CITY

OF BELLINGHAM, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington; THE BELLINGHAM NATIONAL BANK, a corporation organized under the laws of the United States of America, et al.,

Defendants.

Notice and Praecept.

To Frank L. Crosby, Esq., Clerk of Above Entitled Court:

You are requested to take a transcript of the record to be filed with the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following and no other papers or exhibits, to-wit:

1. Bill of complaint.
2. Order directing service by publication.
3. Proof of service by publication.
4. Order of default of Moran Brothers.
5. All answers.
6. Amended bill of complaint.
7. Findings of fact and conclusions of law.
8. Exceptions to findings of fact and conclusions of law, and order allowing the same.
9. Proposed conclusions of law and order denying same.
10. Decree, and exceptions to same, and order allowing the same.
11. Assignment of errors.
12. Petition for appeal and order thereon.

13. Order allowing appeal and fixing superseas.
14. Supersedeas bond.
15. Citation.
16. Stipulation as to record necessary to be printed.
17. Your certificate.
18. Exhibit "A."
19. Opinion of Court.

HASTINGS & STEDMAN,
KELLOGG & THOMPSON,
Attorneys for Plaintiff.

(Service of the within Notice and Praecipe by delivery of a copy to the undersigned is hereby acknowledged this 13th day of June, 1918. Sather & Livesey, Attorneys for Bellingham Nat'l Bank, Whidby Island Sand & Gravel Co.; D. W. Featherkile, City Att'y Bellingham; Hadley & Abbott, Attys. for E. K. Wood Lumber Co., Morrison Mill Co. and Morse Hardware Co.; Caine Grimshaw Co., per P. C. Browne, K. Sauset.)

(Indorsed: Notice to clerk for Transcript, filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 15, 1918. Frank L. Crosby, Clerk, by Edith A. Handley, Deputy.)

156 *American Surety Company of New York vs.*

*United States District Court, Western District of
Washington, Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners doing
business as Moran Brothers; THE CITY OF
BELLINGHAM, a municipal corporation or-
ganized and existing under and by virtue of
the laws of the State of Washington; THE
BELLINGHAM NATIONAL BANK, a cor-
poration organized under the laws of the
United States of America; MORSE HARD-
WARE COMPANY, a corporation; WHIDBY
ISLAND SAND & GRAVEL COMPANY, a
corporation; E. K. WOOD LUMBER COM-
PANY, a corporation; MORRISON MILL
COMPANY, a corporation; K. SAUSET;
CAINE GRIMSHAW COMPANY, a corpora-
tion, *Defendants.*

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America, Western District of
Washington.—ss.

I, F. M. Harshberger, Clerk of the United
States District Court, for the Western District of
Washington, do hereby certify this printed record
numbered from 1 to 161, inclusive, to be a full, true,
correct and complete copy of so much of the record,
papers, and other proceedings in the above and fore-

going entitled cause, as are necessary to the hearing of said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and as is called for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to-wit:

Clerk's fee (Sec. 828 R. S. U. S.) for making record, certificate or return, 307 folios at 15c.....	\$ 46.05
Certificate of Clerk to transcript of record, 4 folios at 15c.....	.60
Seal to said Certificate.....	.20
Statement of cost of printing said transcript of record, collected and paid....	207.50
	<hr/>
	\$254.35

I hereby certify that the above cost for preparing and certifying record amounting to \$254.35 has been paid to me by counsel for appellant.

I further certify that I hereto attach and

herewith transmit the original Citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 17th day of July, 1918.

F. M. HARSHBERGER,
(Seal) Clerk United States District Court.

*In the District Court of the United States for the
Western District of Washington,
Northern Division.*

No. 9-E.

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation, *Plaintiff,*

vs.

AL MORAN and W. T. MORAN, co-partners doing business as Moran Brothers; THE CITY OF BELLINGHAM, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington; THE BELLINGHAM NATIONAL BANK, a corporation organized under the laws of the United States of America; MORSE HARDWARE COMPANY, a corporation; WHIDBY ISLAND SAND & GRAVEL COMPANY, a corporation; E. K. WOOD LUMBER COMPANY, a corporation; MORRISON MILL COMPANY, a corporation; K. SAUSET; CAINE GRIMSHAW COMPANY a corporation, *Defendants.*

JOHN BIEKERT, NORMAN TRANSFER COMPANY, FRANK MIDDLESTADT, JOHN KASTNER, SAM SEVIER, BELLINGHAM CONCRETE WORKS, W. M. SEEGER, and THOMAS M. LYNN and M. J. WILLIAMS, co-partners as Lynn & Williams,

Additional Defendants.

Citation.

The United States of America, to Bellingham National Bank, The City of Bellingham, Morse Hardware Company, Whidby Island Sand & Gravel Company, E. K. Wood Lumber Company, Morrison Mill Company, K. Sauset, Caine Grimshaw Company, John Biekert, Norman Transfer Company, Frank Middlestadt, John Kastner, Sam Sevier, Bellingham Concrete Works, W. M. Seeger, and Thomas M. Lynn and M. J. Williams, co-partners as Lynn & Williams:

WHEREAS, the American Surety Company of New York has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from a decree lately rendered in the district Court of the United States for the Western District of Washington, Northern Division, made in favor of said Bellingham National Bank, The City of Bellingham, Morse Hardware Company, Whidby Island Sand & Gravel Company, E. K. Wood Lumber Company, Morrison Mill Company, K. Sauset, Caine Grimshaw Company, John Biekert, Norman Transfer Company, Frank Middle-

stadt, John Kastner, Sam Sevier, Bellingham Concrete Works, W. M. Seeger, and Thomas M. Lynn and M. J. Williams, co-partners as Lynn & Williams, and has filed the security required by law;

You are, therefore, hereby cited to appear before the said United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, on the 2nd day of July next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the City of Seattle, in the Ninth Circuit, this 3rd day of June, in the year of our Lord one thousand nine hundred and eighteen.

JEREMIAH NETERER,

Judge of the District Court of the United States for the Western District of Washington.

Service of the within Citation by delivery of a copy to the undersigned is hereby acknowledged this 24th day of June, 1918.

SATHER & LIVESEY,

Attorneys for Bellingham National Bank,
Whidby Island Sand & Gravel Co., T. M.
Lynn and M. J. Williams,.

D. W. FEATHERKILE,

Attorney for City of Bellingham.

JOHN KASTNER.

FRANK MIDDLESTADT.

JOHN BIEKERT.

CAINE-GRIMSHAW CO., per P. C. Browne.

K. SAUSET.

SAM SEVIER.

W. M. SEEGER.

BELLINGHAM CONCRETE WORKS,

By J. W. Hopp.

NORMAN TRANSFER CO.,

By C. H. Norman.

HADLEY & ABBOTT,

Attorneys for Morrison Mill Co., E. K. Wood
Lumber Company, and Morse Hardware Co.

(Indorsed: Citation. Filed in the U. S. Dis-
trict Court, Western Dist. of Washington, North-
ern Division, June 3, 1918, 4:45 p. m. Frank L.
Crosby, Clerk, by Edith A. Handley, Deputy.)

